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Wednesday
July 8, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Boston, MA, see announcement on the inside cover of this issue.

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How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

BOSTON, MA

WHEN: July 15, at 9 a.m.
WHERE: Main Auditorium, Federal Building, 10 Causeway Street, Boston, MA.
RESERVATIONS: Call the Boston Federal Information Center, 617-565-8129

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Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 87-011]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the list of suppressive areas under the witchweed quarantine and regulations by adding to the list areas in 7 counties in North Carolina and 1 county in South Carolina. We are also deleting from the list areas in 15 counties in North Carolina and 3 counties in South Carolina. In addition, we are making nonsubstantive, editorial changes. This action is necessary in order to impose certain restrictions on the interstate movement of regulated articles for the purpose of preventing the artificial spread of witchweed and to delete unnecessary restrictions on the interstate movement of regulated articles.

DATES: Interim rule effective July 8, 1987. Consideration will be given only to comments postmarked on or before September 8, 1987.

ADDRESSES: Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-011. Written comments received may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Michael J. Shannon, Senior Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Background

Witchweed is a parasitic plant that causes the degeneration of corn, sorghum, and other grassy crops. It has been found in the United States only in parts of North Carolina and South Carolina.

The witchweed quarantine and regulations (contained in 7 CFR 301.80 *et seq.*, and referred to below as the regulations) quarantine the States of North Carolina and South Carolina and restrict the interstate movement of certain witchweed hosts from regulated areas in the quarantined States for the purpose of preventing the artificial spread of witchweed.

Regulated areas for witchweed are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both in order to prevent the artificial movement of witchweed into noninfested areas. However, the eradication of witchweed is undertaken as an objective only in places that are designated as suppressive areas.

Designation of Areas as Suppressive Areas

We are amending the list of suppressive areas by adding areas in Columbus, Cumberland, Harnett, Hoke, Lenoir, Richmond, and Wayne Counties in North Carolina, and Florence County in South Carolina to the list of suppressive areas in § 301.80-2a of the regulations.

Surveys conducted by the United States Department of Agriculture and State agencies of North Carolina and South Carolina establish that witchweed has spread, or is likely to spread, to certain areas beyond the outer perimenter of areas previously designated as suppressive areas. Therefore, those additional areas in these counties in North Carolina and South Carolina, which were previously nonregulated areas, are designated as witchweed suppressive areas. We are taking this action in order to prevent the spread of witchweed and to facilitate its ultimate eradication.

Deletion of Areas from List of Regulated Areas

We are also amending the list of suppressive areas by deleting areas in Beaufort, Columbus, cumberland, Duplin, Greene, Harnett, Hoke, Johnston, Lenior, Pender, Pitt, Richmond, Sampson, Scotland, and Wayne Counties in North Carolina, and Florence, Horry, and Marlboro Counties in South Carolina in § 301.80-2a of the regulations.

We are taking this action because we have determined that the witchweed no longer occurs in these areas and there is no longer a basis to continue listing these areas as suppressive areas for the purpose of preventing the artificial spread of witchweed. Therefore, we are deleting these areas from the list of suppressive areas in order to remove unnecessary restrictions on the movement of articles designated as witchweed regulated articles.

The regulations list the suppressive areas for each county. Non-farm areas, if any, are listed first; farms are then listed alphabetically.

Emergency Action

William F. Helms, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Because of the possibility that the witchweed could be spread artificially to noninfested areas of the United States, a situation exists requiring immediate action to control the spread of this pest. Also, where witchweed no longer occurs, immediate action is needed to delete unnecessary restrictions on the interstate movement of regulated articles.

For these reasons, we find upon good cause that, pursuant to the administrative procedure provisions of 5 U.S.C. 553, prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. We are requiring that comments concerning this interim rule be submitted within 60 days of its

publication. We will discuss comments received and any amendments required in a final rule that will be published in the **Federal Register**.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an estimated annual effect on the economy of approximately $80; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the Department, we have determined that, although there are approximately 290,000 small entities that move these articles interstate from the nonregulated areas in the United States, only about 5 small entities move them interstate from these areas in North Carolina and South Carolina. Further, we have estimated the overall ecomomic impact from this action to be less than $80.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

The program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V)

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Witchweed.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR 301 is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162 and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.80–2a is revised to read as follows:

§ 301.80–2a Regulated areas; suppressive and generally infested areas.

The civil divisions and parts of civil divisions described below are designated as witchweed regulated areas within the meaning of the provisions of this subpart; and these regulated areas are hereby divided into generally infested areas or suppressive areas as indicated below:

North Carolina

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

Bladen County. The entire county.

Columbus County. The part of the county lying north and west of a line that begins at a point where State Highway 410 intersects the Bladen-Columbus County line, then south along this road to its junction with U.S. 76, then west along U.S. 76 to its junction with State Secondary Road 1356, then south along this road to its junction with the North Carolina-South Carolina border, where the line ends.

The Brown, Annie, farm located on the west side of State Highway 11 and 0.6 mile south of the junction of this road with State Highway 87.

The Brown, Joseph, farm located on the east side of a farm road 0.1 mile south of its intersection with State Secondary Road 1530 at a point 0.6 mile east of the junction of State Secondary Road 1532.

The Harmon, Thelma, (formerly the Lloyd Spaulding farm) located in the southeast corner of the junction of State Secondary Road 1726 and 1713.

The Jacobs, Thomas, farm located 0.2 mile north of State Secondary Road 1847 and 1 mile northeast of the junction of this road 1847 with State Secondary Road 1740.

The Jacobs, Mrs. Willie C., farm located on both sides of a farm road 0.5 mile southeast of its intersection with State Secondary Road 1713 at a point 2.7 miles northeast of the junction of this road with State Secondary Road 1001.

The Lennor, J.C., farm located on the east side of State Secondary Road 157 at a point 0.3 mile northwest of the junction of this road with State Secondary Road 1003.

The Walters, Eugene, farm located on the southeast side of a farm road 0.2 mile southeast of its intersection with State Highway 131 at a point opposite the junction of this highway with State Secondary Road 1539.

Craven County. The Bellamy, Willie, farm located on the north side of State Secondary Road 1444 and 0.9 mile southwest of its junction with State Secondary Road 1440.

The Jolley, Albert, farm located on the south side of State Highway 55 and 0.3 mile west of its junction with State Secondary Road 1258.

The Jones, Vann, farm located on the west side of State Secondary Road 1459 and 0.1 mile north of junction of State Secondary Road 1463 with this road and 0.4 mile off of west side of State Secondary Road 1459.

The Morris, Gerald K., farm located on the north side of State Secondary Road 1444 and 1.4 miles northwest of the junction of State Secondary Road 1447.

The Nelson Estate, Joseph, located on both sides of State Secondary Road 1450 and located 0.1 mile northeast of the intersection of State Secondary Road 1454.

The Register, Keith, farm located 0.3 mile west of the junction of State Secondary Road 1251 with Highway 55 and on the north side of Highway 55.

The Tripp, Dudley, farm located on the north side of State Secondary Road 1444 and 1.1 miles southwest of its junction with State Secondary Road 1440.

The West, Gladys W., farm located on both sides of State Secondary Road 1263 and 1.4 miles east of its southern junction with State Secondary Road 1262.

The White, Raymond E., farm located on both sides of State Secondary Road 1263 and 0.2 mile east of its northern junction with State Secondary Road 1262.

Cumberland County. That area bounded by a line beginning at a point where U.S. Highway 401 intersects the Cumberland-Hoke County line, then east along this highway to its intersection with the Fayetteville city limits, then south, east, and northeast along the city limits to its junction with U.S. Highway 301 north, then northeast along this highway to its junction with U.S. Interstate 95, then northeast along this interstate to its junction with U.S. Highway 13, then east and northeast along this highway to its intersection with the Cumberland-Sampson County line, then southerly along this county line to its junction with the Bladen-Cumberland County line, then westerly along this county line to its junction with the Cumberland-Robeson County line, then northwesterly along this county line to its junction with the Cumberland-Hoke County line, then northwesterly along this county line to the point of beginning.

The Autry, J.G., farm located on the east side of U.S. Highway 301 and 0.1 mile north of its junction with State Secondary Road 1722.

The Barefoot, William, farm located on the east side of State Secondary Road 1005 and 1.1 miles northeast of its junction with State Secondary Road 1813.

The Bullock, Burline, farm located on the northeast side of State Secondary Road 1722 and 0.4 mile west of its junction with U.S. Highway 301.

The Bunce, Mrs. John, farm located on the north side of State Secondary Road 1814 and 0.3 mile west of its junction with State Secondary Road 1813.

The Contrell, C.T., farm located on the west side of State Secondary Road 1400 at its junction with State Secondary Road 1401.

The Elliott, Lattie, farm located on the north side of State Secondary Road 1722 and 0.4 mile east of its junction with State Secondary Road 1714.

The Elliott, W.H., farm located on the south side of State Secondary Road 1609 and 0.5 mile east of its junction with State Secondary Road 1710.

The Gerald, Rufus, farm located on the east side of State Secondary Road 1818 and 0.5 mile north of its intersection with U.S. Highway 13.

The Holiday, Waddell, farm located on the south side of State Secondary Road 3122 and its junction with State Secondary Road 1402.

The Jackson, J.T., farm located on the west side of State Secondary Road 1403 and 0.7 mile north of its junction with U.S. Highway 401.

The Lewis, Gennie, farm located on the north side of State Secondary Road 1724 and 0.2 mile west of its junction with State Secondary Road 1723.

The Lockamy, Earl, farm located on the west side of U.S. Highway 301 and .3 mile south of its junction with State Secondary Road 1802.

The Lovick, Eugene, farm located on the north side of State Secondary Road 1732 and 0.9 mile west of its junction with U.S. Highway 301.

The Matthews, Ada H., farm located on the east side of State Secondary Road 1818 and 0.7 mile north of its intersection with U.S. Highway 13.

The Matthews, Isiah, farm located on a private road off the east side of U.S. Highway 301 and 0.1 mile north of its junction with State Secondary Road 1722.

The McKeithan, Sarah E., farm located on the west side of U.S. Highway 301 and 0.3 mile north of its junction with State Secondary Road 1815.

The McLaurin, Burnice, farm located on the north side of State Secondary Road 1720 and 0.7 mile east of its intersection with State Secondary Road 1719.

The McLaurin, Elwood, farm located on the west side of U.S. Highway 301 and 0.2 mile north of its junction with State Secondary Road 1828.

The McLaurin, George, farm located on the north side of State Secondary Road 1722 and 0.4 mile west of its junction with U.S. Highway 301.

The McLaurin, Greg, farm located on the south side of State Secondary Road 1722 and 0.3 mile west of its junction with U.S. Highway 301.

The McLaurin, McLaurin, farm located on the north side of State Secondary Road 1722 and 0.5 mile west of its junction with U.S. Highway 301.

The McLaurin, Octavious, farm located on the north side of State Secondary Road 1722 and 0.51 mile west of its junction with U.S. Highway 301.

The McMillan, Vander, farm located on the west side of U.S. Highway 301 and 0.5 mile north of its junction with State Secondary Road 1722.

The Powell, William Clinton, farm located on the south side of State Secondary Road 1722 and 0.3 mile east of its junction with State Secondary Road 1714.

The Pruitt, K.D., farm located on the west side of U.S. Highway 13 and 0.6 mile north of its intersection with State Secondary Road 1818.

The Roberts, Christine Dawson, farm located on the south side of State Secondary Road 1714 and 0.5 mile west of its junction with State Secondary Road 1716.

The Shirman, Harry, farm located on the west side of State Secondary Road 1400 and 0.1 mile south of its junction with State Secondary Road 1401.

The Smith, Agnes, farm located on the south side of State Secondary Road 1720 and 0.7 mile east of its intersection with State Secondary Road 1719.

The Smith, Larry Don, farm located on a private road off the west side of U.S. Highway 301 and 0.2 mile south of its junction with State Secondary Road 1722.

The Underwood, Olive T., farm located on the east side of State Secondary Road 1723 and 0.8 mile south of its junction with State Secondary Road 1722.

The Valentine, Ike, farm located on the west side of State Secondary Road 1402 and 0.9 mile south of its junction with State Secondary Road 1400.

The Vann, W.E., farm located on the northwest side of State Secondary Road 1819 at its junction with State Secondary Road 1813.

The Williams, Maggie, farm located on the north side of State Secondary Road 1719 and 1.2 miles north of its intersection with State Secondary Road 1720.

Duplin County. The Branch, Hall, farm located 0.3 mile northwest of State Highway 11 and 0.1 mile northeast of junction of this highway and State Secondary Road 1378.

The Dobson, Elizabeth S., farm located on the north side of State Highway 24 and 0.2 mile east of its intersection with State Secondary Road 1737.

The Dodson, Twillie, farm located on the south side of State Secondary Road 1912 and 0.7 mile west of the junction of this road and State Highway 11.

The Grand, Pietro, farm located 0.2 miles southwest of the end of State Secondary Road 1981.

The Holland, William, farm located on the west side of U.S. Highway 117 at the junction of State Secondary Road 1909.

The Hoover, Annie, farm located on the west side of U.S. Highway 117 and 0.2 mile north of the intersection of this highway with State Secondary Road 1909.

The Jones, H.A., No. 2, farm located on both sides of State Secondary Road 1700 and 0.6 mile west of its intersection with Northwest Cape Fear River.

The Lee, Daphne, farm located on the south side of State Highway 24 and 0.3 mile east of its intersection with State Secondary Road 1737.

The McGowan, Henry C., Heirs, farm located 0.6 mile south of State Secondary Road 1700 and 0.7 mile east of its junction with State Highway 11.

The Miller, O'Berry, farm located on the north side of State Secondary Road 1700, and 0.1 mile east of its junction with State Highway 11.

The Moore, Macy J., farm located on the south side of State Secondary Road 1301 at the junction of this road with State Secondary Road 1353.

The Phillips, Hubert, farm located on the east side of State Secondary Road 1375 and 0.7 mile northwest of its junction with State Highway 24.

The Pigford, P.H., farm located on the south side of State Secondary Road 1980 and 0.2 miles east of the dead end of this road.

The Stokes, J.D., Jr., farm located on both sides of State Secondary Road 1980 and 0.3 mile east of the dead end of this road.

The Thomas, Douglas M., farm located on the southwest side of State Secondary Road 1700 and 0.4 mile northwest of the intersection of this road with State Secondary Road 1728.

The Thomas, J.R., farm located on the south side of State Secondary Road 1700 and 1.8 miles east of the intersection of this road and State Secondary Road 1701.

The Tyner, J.R., farm located on the south side of State Highway 24 and the east side of State Secondary Road 1737 at the intersection of this road.

Greene County. The Alexander, Jenny, farm located on the west side of State Secondary Road 1419 and 0.3 mile south of its junction with State Highway 903.

The Carmon, James E., farm located on the east side of State Secondary Road 1004 and 0.4 mile south of its junction with State Highway 903.

The Edwards, Joe E., farm located on the west side of State Secondary Road 1413 and 0.4 mile north of its junction with State Secondary Road 1400.

Harnett County. That area bounded by a line beginning at a point on the Harnett-Lee County line due west of the head of Barbecue Swamp and extending east to the head of this swamp, then south and east along Barbecue Swamp to its intersection on State Secondary Road 1201, then south and southeast along this road to its junction with State Highway 27, then southeast along this highway to its junction with State Highway 24, then southeast along this highway to its junction with State Secondary Road 1111, then southwest along this road to its intersection with Harnett-Moore County line, then northwest along the Harnett Moore County line to its junction with the Moore Harnett-Lee County line, then northeast along the Harnett-Lee County line to the point of beginning.

That area bounded by a line beginning at a point where the Harnett Cumberland County line and McLeod Creek intersect and extending northwest along this creek to its intersection with State Secondary Road 1117, then northeast, northwest and north along this road to its intersection with Anderson Creek, then southeast along this creek to its intersection with State Highway 210, then northeast along this highway to its junction with State Secondary Road 2030, then southeast along this road to its junction with State Secondary Road 2031, then southwest

along this road to its intersection with the Harnett Cumberland County line, then southwest and west along this county line to the point of beginning.

The Cook, A.L., farm located on the east side of State Secondary Road 1201 and 0.8 mile south of the junction of this road with State Secondary Road 1203.

The Forthberry, Bennett, farm located on the south side of State Secondary Road 1141 and 0.4 mile east of the junction of this road with State Secondary Road 1139.

The Frizzelle, Roscoe, farm located on the south side of State Secondary Road 1141 and 0.3 mile east of its junction with State Secondary Road 1139.

The McNeil, Raymond F., farm located on the east side of State Secondary Road 1201 and north of its junction with State Secondary Road 1202.

The Pulley, Clarence E., farm located on the north side of State Secondary Road 1141 and 0.4 mile east of its junction with State Secondary Road 1139.

The Serina, David, farm located on the south side of State Secondary Road 1141 and 0.4 mile east of its junction with State Secondary Road 1139.

The Spaulding, James, farm located on the north side of State Secondary Road 1141 and 1.3 miles east of its junction with State Secondary Road 1139.

The Thomas, Floyd E., farm located on the northeast side of State Secondary Road 1146 and 0.2 mile north of its junction with State Secondary Road 1117.

The Womack, E.H., farm located on the east side of State Highway 27, and 1 mile north of the junction of this highway with State highway 24.

Hoke County. The Bryant, James, farm located on the south side of State Secondary Road 1003 and 0.8 mile west of its junction with State Secondary Road 1440.

The Butler, James, farm located on the southwest side of State Secondary Road 1003 and 0.2 mile east of its junction with State Secondary Road 1429.

The Dundarrach Trading Company farm located on the southeast side of State Secondary Road 1105 and 0.4 mile southwest of its junction with State Highway 20.

The Fowler, Arne, farm located on the north side of State Secondary Road 1203 and 0.2 mile northeast of its junction with State Secondary Road 1207.

The Goodman, E.A., farm located on the northeast side of State Secondary Road 1001 and 0.9 mile southeast of its junction with State Secondary Road 1105.

The Goodman, E.A., farm located on both sides of State Secondary Road 1448 and 0.9 mile northwest of its junction with State Secondary Road 1436.

The Goodman, John W., farm located on the southwest side of State Secondary Road 1001 and 0.3 mile southeast of its junction with State Secondary Road 1449.

The Goodman, Roy, farm located on both sides of State Secondary Road 1001 and 0.8 mile southeast of its junction with State Secondary Road 1105.

The Graham, Mirah Bell, farm located on the northeast side of State Secondary Road 1001 and 0.4 mile southeast of its junction with State Secondary Road 1455.

The Hough, E.J., farm located on both sides of State Secondary Road 1413 and 0.4 mile east of its junction with State Secondary Road 1426.

The Jacobs, Verliss, farm located on a farm road 0.4 mile north of State Secondary Road 1111 and 0.2 mile southeast of State Secondary Road 1114.

The Johnson, George, farm located on the south side of State Secondary Road 1219 and 0.3 mile east of its junction with State Secondary Road 1218.

The Kelton, Worthy, farm located on the west side of State Secondary Road 1461 and 0.4 mile north of its junction State Secondary Road 1422.

The Lesane, Homer, farm located on the north side of State Secondary Road 1003 and 0.7 mile east of its junction with State Secondary Road 1427.

The Locklear, Alton, farm located on the northeast side of State Secondary Road 1448 at its junction with State Secondary Road 1436.

The McCormick, Flora Kate, farm located on the east side of the junction of State Secondary Roads 1001 and 1455.

The McGregor, Gilbert, farm located on the south side of State Secondary Road 1219 and 0.4 mile east of its junction with State Secondary Road 1218.

The McKoy, W.A., farm located on the southeast side of State Secondary Road 1105 at its junction with State Secondary Road 1116.

The McMillan, James, farm located 0.3 mile south of the junction of State Secondary Road 1113 with State Secondary Road 1130.

The McNair farm, located on both sides of State Secondary Road 1124 and at the junction of this road and the Laurinburg and Southern Railroad.

The McNeill, Ken, farm located on the west side of State Secondary Road 1429 at the dead end of this road.

The McPhatter, Frank, farm located on both sides of State Secondary Road 1135 and 1.1 mile southeast of its junction and State Secondary Road 1116.

The McPhatter, Neil, farm located on the northwest side of State Secondary Road 1100 and 0.1 mile southwest of its junction with State Secondary Road 1102.

The McPhatter, Neil, farm located 0.1 mile west of State Secondary Road 1102 and 0.3 mile northwest of its junction with State Secondary Road 1100.

The McQueen, John, farm located on the north side of State Secondary Road 1105 and 0.2 mile east of its junction with State Secondary Road 1108.

The McQueen, Rosetta, farm located on the south side of State Secondary Road 1134 and 0.4 mile southeast of its junction with State Secondary Road 1135.

The McRae, Ervin, farm located on the north side of State Secondary Road 1302 and 0.1 mile west of its junction with State Secondary Road 1303.

The Melvin, Sylvester, farm located on the north side of State Secondary Road 1003 and 0.4 mile east of its junction with State Secondary Road 1427.

The Oldham, James, farm located on the west side of State Secondary Road 1200 and 0.1 mile north of its junction with State Secondary Road 1201.

The Raeford, Charles, farm located on the south side of State Secondary Road 1422 and 0.2 mile west of its junction with State Secondary Road 1426.

The Rushin, Henry J., farm located on the west side of State Secondary Road 1102 and 0.3 mile north of its junction with State Secondary Road 1100.

The Sandy, L.A., farm located 0.5 mile north of State Secondary Road 1003 and 0.2 mile east of its junction with State Secondary Road 1431.

The Sandy, Lewis, farm located on the east side of State Secondary Road 1429 at the dead end of this road.

The Saunders, J.W., farm located on the south side of State Secondary Road 1447 and 0.6 mile southeast of its junction with State Highway 211.

The Strider, W.I., farm located on the southwest side of State Secondary Road 1134 and 0.1 mile northwest of its junction with State Secondary Road 1116.

The Williams, Edmond, farm located on the west side of State Highway 211 and 0.2 mile south of the junction of this highway and State Secondary Road 1001.

Lenoir County. The Barwick, Charles H. and Evelyn Sutton, farm located on the north side of State Secondary Road 1324 and 0.1 mile east of its junction with State Secondary Road 1308.

The Braxton, Clyde, Estate located on both sides of State Secondary Road 1802 and 0.9 mile northeast of the junction of State Secondary Road 1802 and State Highway 11.

The Carey, Jack, farm located on both sides of State Secondary Road 1906 and 1 mile east of its junction with U.S. Highway 285.

The Dawson, Wayne, farm located on State Secondary Road 1318 and 0.3 mile north of its junction with State Secondary Road 1316.

The Faulkner, Isabelle, farm located on both sides of State Secondary Road 1809 and

0.5 mile east of its junction with State Secondary Road 1720.

The Herring, Frances F., farm located on the west side of State Secondary Road 1310 and 0.6 mile south of its junction with State Secondary Road 1311.

The Herring, Jack A., farm located on both sides of State Secondary Road 1310 and 0.4 mile south of its junction with State Secondary Road 1311.

The Herring, Robert, farm located in the northwest junction of State Secondary Roads 1318 and 1316.

The Hill, Nannie T., farm located in the east junction of State Highway 55 and State Secondary Road 1161.

The Jarman, F.R., farm located on the southeast side of State Secondary Road 1311 and 0.7 mile southwest of its junction with State Secondary Road 1318.

The Pelletier, Roger, farm located on the northeast side of State Secondary Road 1316 and 0.3 miles northwest of its junction with State Secondary Road 1318.

Rouse, James, farm located on the southeast side of State Secondary Road 1307 and 0.4 mile southwest of its junction of State Secondary Road 1307 and State Secondary Road 1324.

The Sutton, Curtis, Estate located on the west side of State Secondary Road 1324 and 0.5 mile north of its junction with State Secondary Road 1309.

The Sutton, Harvey, farm located on the west side of State Secondary Road 1331 and 0.2 mile south of its junction with State Secondary Road 1330.

The Sutton, John W., farm located in the southwest junction of State Secondary Road 1333 and State Secondary Road 1330.

The Sutton, Nancy, farm located on the south side of State Secondary Road 1330 and 0.5 mile east of its junction with State Secondary Road 1331.

The Sutton, W. Edward, farm located on the east side of State Secondary Road 1333 and 0.4 mile south of State Secondary Road 1330.

The Taylor, Heber, farm located on the north side of State Secondary Road 1161 and 0.3 mile east of its junction with State Highway 55.

The Taylor, Heber, No. 2, farm located on the south side of State Secondary Road 1161, 0.9 miles east of its junction with State Highway 55.

Pender County. That area bounded by a line beginning at a point where State Secondary Road 1104 intersects the Pender-Bladen County line, and extending northeast along this county line to its junction with Black River, then southeast along this river to its intersection with State Highway 210, then southwest along this highway to its junction with State Secondary Road 1103, then southeast along this road to its junction with State Secondary Road 1104, then southwest and northwest along this road to the point of beginning.

That area bounded by a line beginning at a point where State Secondary Road 1517, junctions with U.S. Highway 117, and extending northwest along this highway to its intersection with Walker Swamp, then northeast along this swamp to its junction with Pike Creek, then southeast along this creek to its junction with the Northeast Cape Fear River, then south along this river to its intersection with State Highway 210, then southwest along this highway to its junction with State Secondary Road 1518, then southeast along this road to its junction with State Secondary Road 1517, then westerly along this road to the point of beginning.

The Anderson, Julian W., farm located on both sides of State Secondary Road 1108 and 0.9 mile northwest of its junction with State Secondary Road 1107.

The Batson, Arthur, farm located on the east side of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

The Dees, Betty farm located 0.6 mile east of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

The Fensel, F.P., farm located on the north side of State Secondary Road 1103 and 0.6 mile west of its junction with State Secondary Road 1133.

The Hardie, George, farm located on the north side of a field road 0.4 mile east of State Secondary Road 1104 and 0.2 mile northeast of its intersection with Lyon Canal.

The Hutcheson, Katie, farm located on field road 1.7 miles east of U.S. Highway 117 and 0.3 mile south of its intersection with State Secondary Road 1411.

The Lanier, Admah, farm located on the southeast side of State Secondary Road 1411 and 1.4 miles east of its intersection with U.S. Highway 117.

The Marshall, Crawford, farm located on the north side of State Secondary Road 1103 and 0.6 mile west of its junction with State Secondary Road 1133.

The Marshall, Milvin, farm located on the north side of State Secondary Road 1103 and 0.6 mile east of the southern junction of this road and State Secondary Road 1104.

The Terrell, Nancy, farm located on a field road 2.8 miles east of U.S. Highway 117 and 0.3 mile south of its intersection with State Secondary Road 1411.

The Thompson, Dick, farm located on the southwest side of State Secondary Road 1108 and 0.5 mile northwest of its junction with State Secondary Road 1107.

The Ward, Mary Alice, farm located on a field road 0.9 mile east of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

Richmond County. The Ingram, Walter, farm located on the southwest side of State Secondary Road 1440 and 0.3 mile southeast of its junction with State Secondary Road 1433.

The Watkins, John Q., farm located on the southeast side of State Secondary Road 1476 and 0.3 mile northeast of its junction with State Secondary Road 1442.

The Watkins, Mosby, farm located on both sides of State Secondary Road 1476 and 0.2 mile northeast of its junction with State Secondary Road 1442.

Robeson County. The entire county.

Sampson County. That area bounded by a line beginning at a point where State Secondary Road 1927 intersects the Sampson-Duplin County line, then southerly and easterly along this county line to its junction with the Sampson-Pender County line, then southwesterly along this county line to its junction with the Sampson-Bladen County line, then northwesterly along this county line to its junction with the Sampson-Cumberland County line, then northwesterly, north, and northeast along this county line to its junction with the Sampson-Harnett County line, then easterly along this county line to its junction with the Sampson-Johnston County line, then southeast along this county line to its intersection with State Highway 242, then south along this highway to its junction with U.S. Highway 421, then southeast along this highway to its intersection with U.S. Highway 13, then east along this highway to its junction with State Secondary Road 1845, then east along this road to its intersection with U.S. Highway 701, then south along this highway to its junction with State Highway 403, then east along this highway to its junction with State Secondary Road 1919, then east along this road to its intersection with State Secondary Road 1909, then southerly along this road to its junction with State Secondary Road 1004, then southerly along this road to its junction with State Secondary Road 1911, then southerly along this road to its junction with State Secondary Road 1927, then southerly along this road to point of beginning.

The Bradshaw, Delmon, farm located on the southwest side of State Secondary Road 1740 and 0.2 mile northwest of its junction with State Highway 403.

The Darden, Jessie, farm located on the southwest side of State Secondary Road 1758 and 1.0 mile west of its junction with State Secondary Road 1742.

The Harrell, Jerry, farm located on the southwest side of State Secondary Road 1740 and 0.8 mile northwest of its junction with State Secondary Road 1742.

The Hawley, William, farm located on the southwest side of State Secondary Road 1731 and 02.5 mile west of its intersection with State Secondary Road 1725.

The Precise, Stewart, farm located on both sides of State Secondary Road 1757 and 0.5 mile north of its junction with State Secondary Road 1731.

The Shipp, Estelle B., farm located on the southwest side of State Secondary Road 1758 and 0.5 mile west of its junction with State Secondary Road 1742.

The Swain, Robert W., farm located on the northeast side of State Secondary Road 1740 and 01.0 mile northwest of its intersection with State Secondary Road 1742.

The Thorton, Eldon, farm located on both sides of State Secondary Road 1731 and 1.3 miles north of its junction with State Highway 403.

Scotland County. The Carmichael, John, farm located on both sides of State Secondary Road 1612 and 0.2 mile southwest of its intersection with State Secondary Road 1611.

The Cooley, Calvin, farm located on the northwest side of State Secondary Road 1412 and 1.0 mile southwest of its intersection with State Secondary Road 1332.

The Jackson, Coy, farm located on the left side of U.S. Highway 501 and 0.3 mile south of the Scotland-Hoke County line on U.S. Highway 501.

The James, M.P., farm located on the southeast side of State Secondary Road 1612 where State Secondary Road 1619 intersects with this road.

The McNeill, John H., farm located on the southwest side of State Secondary Road 1332 and 0.5 mile northwest of its junction with State Secondary Road 1400.

The McQueen, Clifton, farm located on the northwest side of State Secondary Road 1412 and 1.0 mile southwest of its intersection with State Secondary Road 1332.

The Rowell, J.T., farm located on the east side of State Secondary Road 1400 and 1.0 mile north of its junction with State Secondary Road 1412.

Wayne County. The Barwick, Jack, farm located on the west side of State Secondary Road 1932 and 0.6 mile south of its junction with State Secondary Road 1934.

The Bowden, B.J., farm located on the west side of State Secondary Road 1931 and 0.2 mile south of its intersection with State Secondary Road 1120.

The Broadhurst, Johnny Lee, farm located on the north side of State Secondary Road 1744, 1.2 miles northeast of its intersection with State Secondary Road 1915.

The Daniels, Riley, farm located on the east side of State Secondary Road 1915, 0.1 mile south of its junction and State Secondary Road 1120.

The Exum, Molly, farm located on the east side of State Secondary Road 1739 and 0.1 mile south of its junction and State Highway 55.

The Gautier, Rosa Mae, farm located on the east side of State Secondary Road 1915 and 0.8 mile south of its junction and State Secondary Road 1914.

The Georgia-Pacific Corp., farm located on the north side of State Secondary Road 2010 at its junction and State Secondary Road 1938.

The Grady, Annie, farm located on the west side of State Secondary Road 1915, 0.1 mile south of its junction and State Secondary Road 1120.

The Greenfield, Charlie, farm located on both sides of State Secondary Road 1915 and 0.2 mile north of its junction and State Secondary Road 1914.

The Greenfield, Mattie, farm located on the north side of State Secondary Road 1914, 0.9 miles east of its junction and State Secondary Road 1915.

The Greenfield, William, No. 1, farm located 4 miles west of the Seven Springs on State Secondary Road 1744, 0.2 mile west of its junction and State Secondary Road 1913.

The Haggin, Joe, No. 2, farm located on the east side State Secondary Road 1931 and 1.1 miles northeast of its intersection with State Secondary Road 1120.

The Ham, Thedy, Estate, farm located on the west side of State Secondary Road 1913, 0.5 mile south of its junction with State Highway 111.

The Herring, Thel, farm located on the west side of State Secondary Road 1711 and 0.4 mile north of its junction with U.S. Highway 70A.

The Humphrey, Josephine, farm located on the east side of State Secondary Road 1932 and 0.2 mile north of its intersection with State Secondary Road 1120.

The Lofton, Mary F., farm located on the south side of State Secondary Road 1745 and 0.1 mile west of its junction with State Secondary Road 1952.

The O'Quinn, Earl, farm located on the north side of State Secondary Road 1914, 0.4 mile east of its junction and State Secondary Road 1915.

The Raynor, Early, No. 1, farm located on the south side of U.S. Highway 13 and 0.3 mile east of its junction with State Secondary Road 1207.

The Sasser, Johnny, farm located on the west side of State Secondary Road 1931 and 0.3 mile south of its junction with State Secondary Road 1930.

The Sherrill, Robert G., farm located 9.1 miles southeast of Goldsboro on the east side of State Secondary Road 1915, 0.1 mile south of its junction and State Secondary Road 1120.

The Simmons, James, farm located on the southwest side of State Secondary Road 1932 and 0.2 mile northwest of its junction with State Secondary Road 1934.

The Smith, Allen J., farm located on both sides of State Secondary Road 1953 and 0.5 mile north of State Highway 55.

The Smith, M.G., farm located on the west side of State Secondary Road 1952 and 0.3 mile south of its junction with State Secondary Road 1745.

The Wayne County Landfill property located on the southeast side of State Secondary Road 1726 and 0.5 mile northeast of its junction with State Highway 111.

South Carolina

(1) *Generally infested area.* None.

(2) *Suppressive areas.*

Dillion County. The entire county.

Florence County. The Bartel, D.L., farm located at the west end of a farm road and 0.35 mile from its junction and State Secondary Road 1329, its junction being 0.55 mile north of its junction and State Secondary Road 1329 with South Carolina Highway 51 and U.S. Highway 378.

The Courier, Lizzie, farm located on the east side of State Secondary Road 1329 and 0.45 mile north of its junction of State Secondary Road 1329 with State Highway 51 and U.S. Highway 378, this junction being 1.0 mile east of its junction of highways 51 and 378 with Highway 51.

The McAllister, Armstrong, farm located at the end of a dirt road and 0.4 mile northwest of its junction with another dirt road; then south along this dirt road to its junction with another dirt road, then westerly along this dirt road to its junction with State Secondary Highway 34, this junction being 1.1 miles southeast of the junction of State Secondary Highway 149 with State Secondary Highway 34.

The Moore, Samuel, farm located on the north side of State Secondary Road 893 and 1.05 miles west of the junction of road 893, with State Secondary Road 57, this junction being 2.2 miles north of the junction of road 57 with State Secondary Road 40.

The Munn, F.M., farm located on the southeast side of the intersection of State Secondary Road 24 with Jefferies Creek, this intersection being 1.3 miles northeast of the junction of this road 24 with State Secondary Road 57.

The Parker, Boston, farm located on the northwest side of State Secondary Road 791 and 0.3 mile northeast of its junction of road 791 with State Secondary Road 732, this junction being 1.7 miles northeast of the junction of this road 732 with State Highway 51.

The Poston, Bussy, farm located on the west side of State Secondary Road 34 and 2.9 miles south of its junction of road 34 with State Secondary Road 360, its junction being 0.5 mile southeast of the intersection of road 34 with State Secondary Road 46.

Horry County. That area bounded by a line beginning at a point where State Secondary Highway 33 intersects the South Carolina-North Carolina State line and extending south along this highway to its intersection with State Secondary Highway 306, then west along this highway to its intersection with State Secondary Highway 142, then south along this highway to its junction with State Primary Highway 9, then northwest along this highway to its intersection with State Secondary Highway 59, then southwest and south along this highway to its junction with State Primary Highway 917, then southwest along this highway to its intersection with State Secondary Highway 19, then south and southeast along Highway 19 to its intersection with U.S. Highway 701 at Allsbrook, then northeast along this highway to its intersection with State Primary Highway 9, then southeast and south along this highway to its intersection with the Waccamaw River, then northeast along this river to its intersection with South Carolina-North Carolina State line, then southeast along this State line to its intersection with U.S. Highway 17, then southwest along this highway to its junction with State Primary Highway 90, then west along this highway to its intersection with a dirt road known as Telephone Road, this intersection being 1.3 miles west of Wampee, then southwest and south along Telephone Road to its end, then northwest along a projected line for 1.9 miles to its junction with Jones Big Swamp, then northwest along this swamp to its junction with the Waccamaw River, then west along this river to its intersection with Stanley Creek, then north along this creek 1.6 miles, then northwest along this creek 2.8 miles, then north along a line projected from a point beginning at the end of the main run of this creek, and extending north to the junction of this line with State Primary Highway 905, then southwest along this highway to its junction with State Secondary Highway 19, then north along this highway 2.4 miles to its junction with a dirt road.

Then southwest along this road to its intersection with Maple Swamp, then north along this swamp to its intersection with State Secondary Highway 65, then southwest along this highway to its junction with U.S. Highway 701, then south along this highway to its intersection with U.S. Highway 501, then northwest along this highway to its intersection with State Secondary Highway 548, then west along this highway to its junction with a dirt road, then west along a dirt road to its junction with State Secondary Highway 78, then north along this highway to its junction with State Secondary Highway

391, then northeast along this highway to its junction with U.S. Highway 501, then southeast along this highway to its junction with State Secondary Highway 591, then north along this highway to its intersection with State Secondary Highway 97, then east 0.2 mile to its intersection with a dirt road, then north along this dirt road to its junction with State Primary Highway 319, then northwest along this highway to its junction with State Secondary Highway 131, then east and north along this highway to its intersection with Loosing Swamp, then west and northwest along this swamp to its intersection with State Secondary Highway 45, then soutwest along this highway to its junction with State Secondary Highway 129, then northwest along this highway to its junction with U.S. Highway 501, then northwest along the latter highway to its intersection with Little Pee Dee River, then northwest along this river to its junction with the Lumber River, then northeast along this river to its intersection with the South Carolina-North Carolina State line, then southeast along this State line to the point of beginning, excluding the area within the corporate limits of the towns of Conway and Loris.

The Alford, Alex, farm located on the south side of a dirt road and being 2 miles southwest and west of the junction of this dirt road and State Secondary Highway 99, this junction being 1.75 miles north of the junction of this highway and State Secondary Highway 97.

The Cooper, Thomas B., farm located northeast of a dirt road and 0.75 mile northwest of the intersection of this dirt road with rural paved road No. 109, this intersection being 2.25 miles northeast of the junction of this rural paved road No. 109 with rural paved road No. 79.

The Edge, Nina L., farm located on the west side of a dirt road and 0.8 mile southeast of its junction with a second dirt road, this junction being 0.5 mile south of the junction of the second dirt road and State Primary Highway 90, this second junction being 0.8 mile southwest of the junction of this highway and State Secondary Highway 31.

The Hucks, Ed, farm located on the north side of a dirt road and 1 mile west of its junction with State Secondary Highway 109, this junction being 1.5 miles northeast of the junction of this highway and State Secondary Highway 79.

The Martin, Daniele E., farm located on the east side of State Primary Highway 90 and 0.9 mile northeast of the junction of this highway and State Secondary Highway 377.

The Page, Cordie, farm located on the north side of State Secondary Highway 128 and 0.4 mile west of the junction of this highway and U.S. Highway 501, its junction being at Aynor.

The Richardson, Talmage, farm located on the north side of a dirt road and 1 mile southwest of its junction of this dirt road and State and Secondary Highway 99, this junction being 1.75 miles north of the junction of this highway and State Secondary Highway 97.

The Williamson, Vide, farm located on both sides of a dirt road and 0.4 mile from the junction of this dirt road and State Primary Highway 410, its junction being 0.7 mile northeast of the intersection of State Primary Highway 410 and State Secondary Highway 19.

Marion County. The entire county.

Marlboro County. The Berry, Wilbur, farm located on both sides of State Secondary Road 625 and 0.37 mile south of its intersection with State Secondary Road 624, this intersection being 0.6 mile southwest of the junction of road 624 with State Highway 38.

The Brigman, Ansel, farm located on the southwest side of State Highway 38 and 0.7 mile southeast of the intersection of Highway 38 with State Highway 34, this intersection being 1.6 miles southwest of the intersection of Highway 34 with the Dillion County line.

The Clark, Dewey, farm located on the southwest side of State Highway 38 and 0.65 mile southeast of the intersection of Highway 38 with State Highway 34, this intersection being 1.6 miles southwest of the intersection of Highway 34 with the Dillion County line.

The Leatherman, Sr., Hugh K., farm located on the southwest side of State Highway 38 and 0.77 mile southeast of the intersection of Highway 38 with State Highway 34, this intersection being 1.6 miles southwest of the intersection of Highway 34 with the Dillion County line.

Done in Washington, DC this 2nd day of July, 1987.

W.F. Helms,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87-15481 Filed 7-7-87; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Parts 418, 419, 427 and 429

[Docket No. 0144A]

Wheat, Barley, Oat and Rye Crop Insurance Regulations; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule; Correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published an interim rule in the **Federal Register** on Monday, June 22, 1987, at 52 FR 23423, amending the Wheat, Barley, Oat, and Rye Crop Insurance Regulations (7 CFR Parts 418, 419, 427 and 429, respectively). In that publication the effective calendar year effecting the date for filing contract changes was erroneously designated as being effective for the 1988 calendar year only. This should have read effective for the 1987 calendar year only. This notice is published to correct that error.

ADDRESS: Written comments on this correction may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: FR Doc. No. 87-14064, appearing at pages 23423 and 23424, is corrected as follows:

1. On Page 23423, in Column 1, Line 6 of the Summary Statement and Lines 10 and 31 of the third Column, "1988" is corrected to read "1987".

2. On Page 23424, in Column 1, first paragraph, Line 8; Section 418.7, 419.7, and 427.7 "Application and Policy" Line 13 of Paragraph (d)16.; and Section 429.7 "Application and Policy" Line 10 of Paragraph (d)16., "1988" is corrected to read "1987".

Done in Washington, DC on July 1, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-15519 Filed 7-7-87; 8:45 am]

BILLING CODE 3410-08-M

Farmers Home Administration

7 CFR Part 1910

Credit Reports on Individuals

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding credit reports on individuals. The circumstances requiring this action is a change in the method of submitting contractors' invoices for credit reports. The effect of this action is to establish a procedure for processing invoices and payment of credit report charges by the FmHA Finance Office, instead of the FmHA County Offices.

EFFECTIVE DATE: July 8, 1987.

FOR FURTHER INFORMATION CONTACT: Reginald J. Rountree, Loan Officer, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5346, South Agriculture Building, 14th and Independence Avenue, SW, Washington, DC 20250, Telephone (202) 475-4209.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management. At

the present time, FmHA County Office employees are submitting the ordering tickets to the Finance Office for payment after receipt of credit report services. This action will permit the FmHA Finance Office to process the invoices submitted by the contractor thus, relieving most FmHA County Office employees of the responsibility of submitting ordering tickets.

It is the policy of this department to publish for comment rules relating to public property, loans, grants, benefits, or contracts not withstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal Agency management and matter involving contracts and publication for comment is unnecessary.

The Catalog of Federal Domestic Assistance programs affected by this action are:

10.405 Farm Labor Housing Loans and Grants
10.410 Low Income Housing Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.420 Rural Self-Help Housing Technical Assistance
10.421 Indian Tribes and Tribal Corporation Loans

This action is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Programs." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy of the human environment and in accordance with the National Environmental Policy Act of 1969. Pub. L. 91-190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1910

Administrative practice and procedure, Credit, Government contracts, Reporting and recordkeeping requirements.

Accordingly, Chapter XVIII, Title 7 of the Code of Federal Regulations is amended as follows:

PART 1910—GENERAL

1. The authority citation for Part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

Subpart B—Credit Reports (Individual)

2. Section 1910.60 is amended by revising paragraph (a) to read as follows:

§ 1910.60 Processing order tickets.

* * * * *

(a) An original and two copies of the order ticket will be prepared, except that, an extra copy will be furnished when requested by a contractor. The original order ticket will be signed by the County Supervisor. One copy will be kept in the applicant's file. The signed original and remaining copy will be sent to the contractor serving the place of residence of the applicant.

* * * * *

3. Section 1910.61 is amended by revising paragraphs (b)(1), (b)(2), (b)(3), (d)(4) and (d)(5) to read as follows:

§ 1910.61 Collecting fees, invoicing and payments.

* * * * *

(b) * * *

(1) Contractor returns a copy of the order ticket (with billing data completed) to the local FmHA Office with each credit report. Contractor also sends a monthly statement to the Finance Office with the signed original order tickets attached.

(2) The County Supervisor will review the report and, if acceptable, file the report and copy of the order ticket in the applicant's file. If the report is not acceptable, refer § 1910.61 (d).

(3) After receipt of the monthly statement from contractor, the Finance Office will match the original signed order tickets with the statement, "verify report charges and initiate payments where the order tickets have been signed by the field office representatives." In addition to the above, on a routine basis, the Finance Office will perform a statistical sampling of the signed order tickets received from the contractor to determine if the tickets were valid. In order to accomplish this, a confirmation letter will be sent to the respective field office for verification.

* * * * *

(d) * * *

(4) The following applies when order tickets are processed for payment under paragraph (b) of this section. Original order tickets received in the Finance Office from the contractor, which have not been signed by the County Supervisor, will be returned to the responsible FmHA field office. If the returned order ticket represents a valid request for a credit report, the order ticket will be signed by the County Supervisor and returned to the Finance Office so payment can be made to the contractor.

(5) The following applies when order tickets are processed for payment under paragraph (b) of this section. If a credit report is cancelled after ordering the report, or a credit report is not received within 25 days from date report was ordered, send a memorandum with a photocopy of the order ticket to the Finance Office (Attn: FC 3600-2) asking them not to pay for the report. A copy of the memorandum and order ticket will also be sent to the Director/SFH/PD, Farmers Home Administration, Room 5334, South Agriculture Building, 14th and Independence Avenue, Washington, DC 20250. If the late report is received and found acceptable, notify the Finance Office that payment can be made and send a copy of the memorandum to the National Office.

Dated: June 17, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87-15443 Filed 7-7-87; 8:45 am]
BILLING CODE 3410-07-M

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7 CFR Part 1980

Nonprofit National Corporations Loan and Grant Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration (FmHA) amends the previous interim rule on its Nonprofit National Corporations Loan and Grant Program regulations that was published in the **Federal Register** on September 30, 1986, in Vol. 51, No. 189, page 34926. As a result of comments from the public on and a review by FmHA of the previous rule in conjunction with statutory amendments to the Food Security Act of 1985, Pub. L. 99-198, it has been determined that there is an immediate need to make substantive changes to the existing interim rule. The changes provide in part for an expansion of the use of grant funds from technical assistance only to technical and financial assistance to projects to nonprofit national corporation(s) assists.

DATE: Interim rule effective on July 8, 1987. Written comments must be received on or before August 7, 1987.

ADDRESS: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration,

USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this date will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lawrence Bowles, Loan Specialist, Business and Industry Division, Farmers Home Administration, USDA, Room 6321–S, Washington, DC 20250, Telephone (202) 475–4100.

SUPPLEMENTARY INFORMATION:

Classification.

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be non-major, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

FmHA is implementing this interim rule immediately with a 30-day comment period on these amendments only. A final rule on this regulation will be published which will address comments the agency has already received from the public on the interim rule that was published in the September 30, 1986, issue of the **Federal Register** Vol. 51, No. 189, page 34926 as well as any comments received as the result of the publication of this interim rule. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rule making because in order to effectively carry out the mandate of the law, it is necessary that regulations be implemented promptly. Attempting to implement these rule changes by means of a proposed rule would be contrary to the public interest.

These rule changes are based on public laws enacted by the Congress of the United States. H.J. Resolution 738 provides that the implementation of the provisions of section 1323 of the Food Security Act of 1985, Pub.L. 99–198, will be completed not later than September 30, 1987. Failure to implement the provisions of the laws into these regulations in a timely fashion will make it impractical for the interests of the public to be served by the enabling legislation. As a consequence, such failure to make these rule changes by means of an interim rule would result in an unnecessary time delay which would be contrary to the public interest.

Based on direct discussions with Senators, Congressmen, and nonprofit national rural development and finance corporations, it is apparent that the changes provided for in this interim rule are necessary to make the program function in a practical and efficient manner. Failure to incorporate the statutory amendments into the FmHA regulations in advance of the legislative expiration of the program (September 30, 1987) would likely result in the failure of the objective of rural development, especially in areas where there is need to provide employment for agriculturally depressed economies.

The general consensus of FmHA and those people and organizations affected by this regulation is that in order for the program borrowers to obtain a sufficient return from loans and other assistance provided to the borrower-financed projects, the grant funds will have to be used all or in part to provide financial assistance which will provide the borrower with return on the use of grant funds as an offset to the higher cost of interest which must be paid on the guaranteed loan.

The reason an interim rule is necessary is to afford the borrower(s) a practical opportunity to apply for FmHA assistance and to establish an operational program that will allow FmHA to review and approve such within the time frame established by law. Since FmHA is allowed 60 calendar days for processing and approval of the borrower's application for assistance and since the authority to implement this program expires on September 30, 1987, the borrower(s) will have only a short time to establish a request for assistance that has all of the information required by FmHA. If the FmHA were to attempt to implement the statutory changes to its regulations by means of a proposed rule with a 30-day comment period and final rule, the process would result in such a limited amount of time for the development of an application that the FmHA could not provide the borrower(s) with program assistance before the statutory authority to implement the program expired considering the 60-day period FmHA has to review and approve the application request.

Programs Affected

This program/activity is listed in the catalog of Federal Domestic Assistance under No. 10.434 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials, 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, *Environmental Program*. It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Discussion of Interim Rule

Background

The major purpose for revising the FmHA regulations at this time is to implement provisions of section 1323 of the Food Security Act of 1985 (Pub. L. 99–198) as amended which provides that grant funds can be used by the borrower for technical and financial assistance, including the capitalizing of revolving loan fund.

List of Subjects in 7 CFR Part 1980

Loan programs—Nonprofit corporations, Grant programs—Nonprofit corporations.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

Subpart G—Nonprofit National Corporations Loan and Grant Program

2. In § 1980.602, the introductory text of paragraph (a)(1) is revised to read as follows:

§ 1980.602 Definitions and abbreviations.

(a) * * *

(1) *Borrower.* (Primary recipient) (A nonprofit national corporation (NNC) The entity receiving FmHA guaranteed loan and/or grant funds for the purpose of improving business, industry and employment opportunities in a rural area. The borrower must:

* * * * *

3. In § 1980.611, paragraph (a) and the introductory text of paragraph (c) are revised to read as follows:

§ 1980.611 Loan and grant purposes.

(a) FmHA grant and/or guaranteed loan funds will not be used to finance more than 75 percent of the total cost of a borrower-financed project. In no event will the FmHA grant and/or loan funds exceed $500,000 to any one borrower-financed project (ultimate recipient). Other loans, grants and/or borrower or project contributions must be used to make up the difference between the total project cost and the assistance provided by FmHA. The borrower must certify to the lender and FmHA that any assistance to borrower-financed projects involving FmHA-related funds, complies with the criteria in this section and § 1980.612 of this subpart and the borrower and borrower-financed projects must meet the applicable intergovernmental consultations and environmental requirements of §§ 1980.631 and 1980.632 of this subpart.

* * * * *

(c) FmHA grant and/or guaranteed loan funds must be used by the borrower to provide technical and/or financial assistance to its projects. Financial and technical assistance from the borrower to the projects through its statewide affiliate(s) must be for improving, development, or financing business, industry, and employment in rural areas, and may include but not be limited to:

* * * * *

4. Section 1980.625 is revised to read as follows:

§ 1980.625 Availability of credit from other sources.

Inability to obtain credit elsewhere is not a requirement for assistance under this subpart.

5. Section 1980.630 is revised to read as follows:

§ 1980.630 Projects not involving Federal assistance.

Once the borrower has provided assistance to projects from its revolving funds in an amount equal to the loan(s) guaranteed by FmHA and/or grant(s) made by FmHA, the requirements imposed on the borrower shall not be applicable to any new projects thereafter financed from the revolving funds. Such new projects shall not be considered as being derived from Federal funds. The requirements shall continue in relation to all other projects.

6. In § 1980.632, paragraphs (c) and (d) are revised to read as follows:

§ 1980.632 Environmental requirements.

* * * * *

(c) *Application for loan guarantees and for grants other than technical assistance.* As part of the application, the applicant must provide a completed Form FmHA 1940–20, "Request for Environmental Information," for each project specifically identified in its plan submitted with its loan guarantee application and grant application when the grant is for other than technical assistance. FmHA will review the application(s) supporting materials and any required Forms FmHA 1940–20 and initiate a Class II environmental assessment for the application(s). This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects and that can be identified at this time from the information submitted. Because neither the completion of the environmental assessment nor the approval of the application is an FmHA commitment to the use of funds for a specific project and because such funds can eventually be used in several States, no public notification requirements for a Class II assessment will apply to the application(s). The affected public has not been sufficiently identified at this stage of the FmHA review. Should an application be approved, each project to be assisted would undergo the applicable environmental review and public notification requirements in Subpart G of Part 1940 of this chapter prior to FmHA's consent to use loan or non-technical assistance grant funds for a project. (See paragraph (d) of this section.) FmHA will prepare an Environmental Impact Statement for any application for a loan guarantee or non-technical assistance grant funds determined to have a sufficient effect on the quality of the human environment.

(d) *Requests to make loans and non-technical assistance grants to projects.* As part of the borrower's request to the lender and FmHA for concurrence to make a loan and/or non-technical assistance grant to a project (see §§ 1980.611(a) and 1980.652(b) of this subpart), the borrower will include for the project a properly completed Form FmHA 1940–20 executed by the ultimate recipient. FmHA will review the Form FmHA 1940–20 and complete for the project the environmental review required by Subpart G of Part 1940 of this chapter. The results of this review will be used by FmHA in making its decision on the request. No commitment of these funds to the project may be made by the borrower until an affirmative decision is rendered by the lender and FmHA.

7. In § 1980.642, paragraphs (e), (k) and (l) are revised to read as follows:

§ 1980.642 Borrower requirements.

* * * * *

(e) Must demonstrate a need for guaranteed loan and grant funds. As a minimum, the borrower must identify a sufficient number of proposed and known projects it has on hand, and the corresponding amounts must be at least equal to FmHA funding of its loan and grant request.

* * * * *

(k) The borrower's plan for relending the grant and/or guaranteed loan funds. The plan must be of sufficient detail to provide FmHA with a complete understanding of what the borrow will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will get from the borrower to the ultimate recipient. The eligibility criteria, the application process, method of disposition of the funds to the project, monitoring of the project's accomplishments and reporting requirements by the project's management are some of the items that must be addressed by the borrower's relending plan.

(l) A scope of work, prepared by the borrower, which provides a detailed description of the financial and/or technical assistance to be made available to the project, how the assistance will be made available, and how the borrower will monitor the impact of the assistance to the project.

8. In § 1980.644, the heading and paragraphs (a), (b), and the introductory text of paragraph (d) are revised and paragraph (f) is added to read as follows:

§ 1980.644 Use of grant funding.

(a) FmHA in support of an approved financial and technical assistance program to be carried out by the borrower can provide funds to the borrower in the form of grants which will be used to provide the ultimate recipient with financial and/or technical assistance (including capitalizing revolving loan programs). Technical assistance is a problem solving activity such as market research, product and/or service improvement, etc., as opposed to the acquisition of physical assets or debt payment.

(b) A grant can be made to complement a loan guarantee made or to be made to a borrower subject to the terms and conditions of the Grant

Agreement (Appendix B of this subpart) to be executed by the borrower.

* * * * *

(d) Before assistance in the form of an FmHA grant will be considered, one or more of the following criteria must be present:

* * * * *

(f) For grants made prior to this revision of this subpart, the borrower can upon approval by FmHA of a revised scope of work use the unexpended grant funds in the borrower's possession for financial assistance (including capitalizing its revolving loan programs) as well as technical assistance for which it has already been approved. FmHA will approve the revised scope of work if the purpose of the program of rural development for which this subpart was established will be achieved and environmental requirements of this subpart fulfilled. For any revision of the scope of work a new grant agreement will be executed.

9. In § 1980.645, paragraph (d) is removed and paragraphs (a) and (b) are revised to read as follows:

§ 1980.645 Grant approval and fund obligation.

(a) The borrower will submit a request for an FmHA grant directly to the Director, Business and Industry Division, in the National Office for development and processing using Part A of Form FmHA 1980–60. A copy will be provided to the guaranteed lender for information purposes only.

(b) The FmHA Administrator, or designee, has the authority to approve all new applications for grants. Grant offers are made on specific terms which govern the approval grant project.

* * * * *

§ 1980.646 [Removed and reserved]

10. Section 1980.646 is removed and reserved.

11. In § 1980.651, paragraph (f) is revised to read as follows:

§ 1980.651 Filing and processing applications for loans and/or grants.

* * * * *

(f) *Timeframe for processing applications for grant and/or loan guarantees.* All grant and/or guaranteed loan applications must be approved or disapproved, and the lender (borrower for grant) notified in writing, not later than 60 days after receipt of a completed application.

(1) If an application is not complete, the lender (borrower for grant) will be notified, in writing, not later than 20 calendar days after receipt of the application by FmHA, of the reason(s) the application is incomplete.

(2) When an application is disapproved, the written notification to the lender (borrower for grant) will state the reason(s) for disapproval.

(3) When an application is disapproved and subsequent action, as the result of an appeal, reverses or revises the initial decision, FmHA will notify the lender (borrower for grant) of such action within 15 calendar days after the reversal/revision decision is made.

12. Section 1980.655 is revised to read as follows:

§ 1980.655 Disbursement of FmHA grant and guaranteed loan funds.

(a) FmHA grant funds will be disbursed to the grantee in accordance with the provisions of USDA's Uniform Federal Assistance Regulations.

(b) FmHA guaranteed loan funds will be disbursed by the lender to the borrower upon completion of all or part of the borrower-assisted project(s). Funds will be disbursed to the borrower in amounts corresponding to the proportionate quantity of work completed. A written certification from the borrower, to the lender, stating the acquisition of property, plant, and equipment and any other expediture of guaranteed loan funds has been completed in an amount equal to the guaranteed loan funds disbursed to the borrower by the lender is required.

13. In Appendix B the first paragraph is revised, sections 5 and 14 are revised, and section 22 is added to read as follows:

Appendix B—Grant Agreement (Nonprofit National Corporations)

This Agreement dated_____, 19____, between_____,

Herein called "Grantee," and the United States of America acting through the Farmers Home Administration, Department of Agriculture, herein called "Grantor," WITNESSETH:

Grantee has determined to undertake a financial and/or technical assistance program as described in the Scope of Work dated:_____(herein called program) as an estimated cost of $_____, and has duly authorized the undertaking of such program;

* * * * *

5. No nonexpendable personal property to be owned or used by the borrower or its affiliate(s) will be acquired wholly or in part with grant funds.

* * * * *

14. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and the demand of Grantor, will, to the extent legally permissible, repay to Grantor forthwith the original principal amount of the grant stated hereinabove, with interest equal to the rate of interest paid on U.S. 26-week Treasury Bills adjusted quarterly from the date of the default. The provisions of this Grant Agreement may be enforced by Grantor at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made. * * *

* * * * *

22. Have received, have been approved for, or have applied for a guaranteed loan in accordance with the provisions of this subpart. For such approved or applied for guaranteed loan, the borrower must meet the eligiblity requirements of this subpart. The borrower must apply for a guaranteed loan not later than 60 calendar days prior to the end of the time in which FmHA is authorized to approve such guaranteed loans or the borrower will be considered to be in default of this instrument if FmHA is not able to approve the guaranteed loan before its legal ability to do so expires. In the event the borrower does not close the guaranteed loan within 180 calendar days from receipt of this grant for any reason other than arbitrary and capricious actions on the part of the FmHA, the borrower will be in default of this instrument and will be subject to the provisions of section 14 of this instrument.

* * * * *

Dated: June 30, 1987.

John C. Musgrave,

Acting Administrator, Farmers Home Administration.

[FR Doc. 87–15444 Filed 7–7–87; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–NM–197–AD; Amdt. 39–5630]

Airworthiness Directives; McDonnell Douglas Model DC–9–30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC–9–30 series airplanes, which requires structural inspections and repair or replacement, as necessary, to assure continued airworthiness. Some McDonnell Douglas DC–9–30 series

airplanes are approaching or have exceeded the manufacturer's original fatigue design life. This AD is prompted by a structural reevaluation, which has identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original design life goal. Fatigue cracks in these areas, if not detected and corrected, could result in a compromise of the structural integrity of these airplanes.

DATES: Effective August 10, 1987.

The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of August 10, 1987.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–L65 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6319.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive which requires structural inspections, and repair or replacement, as necessary, of the Principal Structural Elements (PSEs) listed in McDonnell Douglas report number L26–008, DC–9 Supplemental Inspection Document (SID), was published in the **Federal Register** on October 24, 1986 (51 FR 37737). The comment period for the proposal closed December 15, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter requested a provision be included in this rule which grants exemption to those operators who have acceptably incorporated the Supplemental Inspection Document into their approved maintenance program. The commenter stated that a provision of this type was included in previous supplemental structural inspection rulemaking. The FAA does not concur with the request. The maintenance program, including inspection intervals, of each operator is subject to review and adjustment based on their service experience and reliability program. These adjustments may not comply with the criteria used to generate the Supplemental Inspection Program. The FAA has determined that adequate provisions have been incorporated into the applicability statement of the AD to grant credit for those operators who have previously accomplished the intent of the AD.

Both commenters objected to the requirements of paragraph B., that all cracks detected as a result of the inspections required by paragraph A. be repaired before further flight. The FAA does not concur with the objections. By definition, the structure inspected under this program is critical and any cracks found must be repaired before further flight. The FAA recognizes that alternate means of compliance may exist which provide an equivalent level of safety, and paragraph D. provides for such alternatives.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

It is estimated that 369 airplanes of U.S. registry and 12 U.S. operators will be affected by this AD. It is estimated that incorporation of the Supplemental Inspection Program for a typical operator will take approximately 1,000 manhours and that the average labor cost will be $40 per manhour. Based on these figures, the cost to U.S. operators to incorporate the SID program is estimated to be $480,000.

The recurring inspection cost to the affected operators is estimated to be 341 manhours per airplane per year, at an average labor cost of $40 per manhour. Based on these figures, the annual recurring cost of this AD is estimated to be 5,033,160.

Based on the above figures, the total cost impact of this AD is estimated to be $5,513,160 for the first year, and $5,033,160 for each year thereafter.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, small entities within the meaning of the Regulatory Flexibility Act are affected. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9–30 series airplanes, certificated in any category. Compliance required as indicated unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

A. Within one year after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection of the Principal Structural Elements (PSE) defined in section 2 of Volume I of McDonnell Douglas Report No. L26-008, DC–9 Supplemental Inspection Document (SID), dated May 1986, or later FAA-approved revisions, in accordance with section 2 of Volume III of that document. The non-destructive inspection techniques set forth in Volume II of the SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results (negative or positive) must be reported to McDonnell Douglas, in accordance with the instructions of section 2 of Volume III of the SID.

B. Cracked structure detected during the inspections required by paragraph A., above, must be repaired before further flight in accordance with an FAA-approved method.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

The manufacturer's specifications and procedures identified and described in this directive are incorporated by reference and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–L65 (54–60). These documents may be examined at the FAA, Northwest Moutain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective August 10, 1987.

Issued in Seattle, Washington, on May 19, 1987.

Wayne J. Barlow,

Director, Northwest Moutain Region.

[FR Doc. 87–15412 Filed 7–7–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86–NM–163–AD; Amdt. 39–5631]

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to McDonnell Douglas Model DC–8 series airplanes, which requires structural inspections and repair or replacement, as necessary, to assure continued airworthiness. Some McDonnell Douglas DC–8 series airplanes are approaching or have exceeded the manufacturer's original fatigue design life. This amendment is prompted by a structural reevaluation, which has identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original design life goal. Fatigue cracks in these areas, if not detected and corrected, could result in a compromise of the structural integrity of these airplanes.

DATES: Effective August 10, 1987. The incorporated by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of August 10, 1987.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–L65 (54–60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6319.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive which requires structural inspections, and repair or replacement, as necessary, of the Principal Structural Elements (PSEs) listed in McDonnell Douglas Report No. L26–011, DC–8 Supplemental Inspection Document (SID), was published in the **Federal Register** on October 8, 1986 (51 FR 36018). The comment period for the proposal closed December 1, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

On commenter requested a provision be included in this rule which grants exemption to those operators who have acceptably incorporated the Supplemental Inspection Document into their approval maintenance program. The commenter stated that a provision of this type was included in previous supplemental structural inspection rulemaking. The FAA does not concur with the request. The maintenance program, including inspection intervals, of each operator is subject to review and adjustment based on their service experience and reliability program. These adjustments may not comply with the criteria used to generate the Supplemental Inspection Program. The FAA has determined that adequate provisions have been incorporated into the applicability statement of the AD to grant credit for those operators who have previously accomplished the intent of the AD.

Both commenters objected to the requirements of paragraph B., that all cracks detected as a result of the inspections required by paragraph A. be repaired before further flight. The FAA does not concur with the objections. By definition, the structure inspected under this program is critical and any cracks found must be repaired before further flight. The FAA recognizes that alternate means of compliance may exist which provide an equivalent level of safety, and paragraph D. provides for such alternatives.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

It is estimated that 189 airplanes of U.S. registry and 52 U.S. operators will be affected by this AD. It is estimated that incorporation of the Supplemental Inspection Program (SID) for a typical operator will take approximately 500 manhours and that the average cost will be $40 per manhour. Based on these figures, the cost to U.S. operators to incorporate the SID program is estimated to be $1,040,000.

The recurring inspection cost to the affected operators is estimated to be 245 manhours per airplane per year at an average labor cost of $40 per manhour. Based on these figures the annual recurring cost of this AD is estimated to not exceed $1,852,200.

Based on the above figures, the total cost impact of this AD on U.S. operators is estimated to be $2,892,200 for the first year, and $1,852,200 for each year thereafter.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model DC–8 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 39.13 of Part 39 of the Federal

Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-8 series airplanes, certificated in any category. Compliance required as indicated unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following.

A. Within one year after the effective date of this AD, incorporate a revision in to the FAA-approved maintenance inspection program which provides for inspection of the Principal Structural Elements (PSE) defined in section 2 of Volume I of McDonnell Douglas Report No. L26-011, DC-8, Supplemental Inspection Document (SID), dated December 1985, or later FAA-approved revisions, in accordance with section 2 of Volume III of that document. The non-destructive inspection techniques set forth in Volume II of the SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results (negative or positive) must be reported to McDonnell Douglas, in accordance with the instructions of Section 2 of Volume III of the SID.

B. Cracked structure detected during the inspections required by paragraph A., above, must be repaired before further flight in accordance with an FAA-approved method.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Management, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

The manufacturer's specifications and procedures identified and described in this directive are incorporated by reference and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective August 10, 1987.

Issued in Seattle, Washington, on May 19, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-15413 Filed 7-7-87; 8:45 a.m.]

BILLING CODE 4910-13-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1310

Administrative Costs Recovery

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: This final rule amends TVA's existing administrative cost recovery regulations by providing for the collection of a $2 fee to accompany applications for quota deer hunt permits at TVA's Land Between The Lakes (LBL) in western Kentucky and Tennessee. This regulation is promulgated under authority of the Tennessee Valley Authority Act of 1933, as amended, and Title V of the Independent Offices Appropriations Act of 1952 which authorize TVA to prescribe for certain services or things of value provided by TVA such fee, charge, or price as it determines to be fair and equitable.

EFFECTIVE DATE: July 8, 1987.

FOR FURTHER INFORMATION CONTACT: Elizabeth E. Thach, Director of Land Between The Lakes, Golden Pond, Kentucky 42231, (502) 924-5602.

SUPPLEMENTARY INFORMATION: TVA published the proposed rulemaking in the **Federal Register** on May 27, 1987 (52 FR 19734-35) and invited comments for 30 days ending June 26, 1987. No comments were received. Accordingly, TVA is promulgating this final rule as proposed.

Hunters at LBL must hold a State hunting permit for the State in which they are hunting (Kentucky or Tennessee), and a hunter use permit from TVA for which TVA charges a fee. Because of the large number of people desiring to hunt deer at LBL, TVA must limit participation by random selection of applicants for special quota deer hunt permits as part of an intensive managed hunting program. In order to participate in quota deer hunts, hunters must complete an application form which must be received by TVA by established deadlines well in advance of the fall deer hunt. A drawing is conducted by computer and a quota hunt permit or rejection notice is mailed to the applicant.

The $2 application fee for LBL quota deer hunt permits will recover administrative costs associated with processing the forms, conducting the drawing, and notifying applicants of rejection or selection. Application forms must be made available no later than July 1987 in order to process the applications for the 1987 quota deer hunt. In light of the foregoing and the fact that no comments were received on the proposed rulemaking, TVA has determined that good cause exists to make these regulations effective immediately and that it is impracticable and unnecessary to delay the effective date of this rulemaking beyond the publication date hereof.

TVA has determined that this rule will not be a "major" rule under Executive Order No. 12291 and will not have a significant economic impact on a substantial number of "small entities" as defined by the Regulatory Flexibility Act.

TVA has determined in accordance with section 5.2.27 of TVA's procedures implementing the National Environmental Policy Act [48 FR 19264] that the rule is of a type that does not have a significant impact on the human environment. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 18 CFR Part 1310

Government property, Hunting, Land, Land sales.

For the reasons set forth in the preamble, Title 18, Chapter XIII of the Code of Federal Regulations is amended as follows:

PART 1310—ADMINISTRATIVE COST RECOVERY

1. The authority citation for Part 1310 is revised to read as follows:

Authority: 16 U.S.C. 831-831dd; 31 U.S.C. 9701.

§ 1310.2 [Amended]

2. Section 1310.2 is amended by adding paragraph (c) to read as follows

* * * * *

(c) *Quota deer hunt applications.* Quota deer hunt permit applications will be processed by TVA if accompanied by the fee prescribed in paragraph (d) of § 1310.3 of this part.

§ 1310.3 [Amended]

3. In § 1310.3, paragraph (d) is redesignated as paragraph (e) and a new paragraph (d) is added to read as follows:

* * * * *

(d) *Quota deer hunt application fees.* A fee of $2 for each person must

accompany the completed application form for a quota deer hunt permit. Applications will not be processed unless accompanied by the correct fee amount. No refunds will be made to unsuccessful applicants, except that fees received after the application due date will be refunded.

* * * * *

Dated: June 29, 1987.

W. F. Willis,

General Manager.

[FR Doc. 87-15426 Filed 7-7-87; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 511

[Docket No. R-87-1342; FR-2371]

Rental Rehabilitation Program; Reallocation of Rental Rehabilitation Grant Amounts

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises the administratively established ceiling or maximum amount of additional rental rehabilitation grant funds an existing grantee can receive through the program's "reallocation" process. Under this amendment of 24 CFR 511.33(b), a Rental Rehabilitation grantee may receive reallocated funds in an amount not exceeding 30 percent of the cumulative amount initially obligated to the grantee for the current fiscal year and for any preceding fiscal years for which rehabilitation grant funds remain available for obligation. All reallocations for these fiscal years, whether received at one time or in several installments, are added together to determine whether this ceiling will be exceeded. Currently, during any fiscal year, HUD may make a reallocation to a grantee so long as the total amount obligated to the grantee does not exceed 130 percent of the amount initially obligated to the grantee for that year. Reallocated funds may come from any fiscal year's appropriation for which funds are available for reallocation. Funds become available for reallocation when prospective grantees fail to apply for, or to have approved, their grants, or when HUD deobligates approved grant amounts, as authorized by this Part 511.

EFFECTIVE DATE: August 7, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Ann Kolesar, Rental Rehabilitation Division, Office of Urban Rehabilitation, Room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-7000, telephone (202) 755-5970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 17 of the United States Housing Act of 1937 (the 1937 Act), 42 U.S.C. 1437o, established the Rental Rehabilitation Program. This program provides grants to States and units of general local government to help support the rehabilitation of privately owned real property to be used for primarily residential rental purposes. The program is designed to increase the supply of standard housing units affordable to lower income families. This objective is achieved by: (1) Providing government funds to assist in the rehabilitation of existing units, and (2) authorizing the use of rental housing assistance, provided under section 8 of the 1937 Act, to lower income families to help them afford the rent for units in projects assisted with program funds, or to find alternative housing.

Under section 17(b)(3) of the 1937 Act, the Secretary, after initially allocating rental rehabilitation funds, may reallocate these funds among grantees based on an assessment of the progress of grantees in carrying out rehabilitation grant activities in accordance with their specified schedules. Reallocations are intended to encourage expeditious use of rental rehabilitation grant amounts, consistent with the sound development and administration of the grantees' programs.

Funds may become available for reallocation in several ways under Part 511. Formula grantees may fail to apply for their formula allocations or may have their program descriptions disapproved, in whole or in part; in a HUD-administered State's program, there may be insufficient approvable applications for the funds available; or grant amounts may be deobligated by HUD for lack of progress by the grantee under the criteria and procedures in § 511.33(c) or as a corrective and remedial action under § 511.82(c)(3). Whatever the method by which funds become available for reallocation, § 511.33(b) sets out the basic criteria under which HUD reallocates the available funds. Among other things, paragraph (b) currently provides that HUD will not reallocate rental rehabilitation funds to any grantee that would result in an "allocation" (*i.e.*, a total grant amount) that exceeds 130 percent of the amount initially obligated to the grantee in that fiscal year.

A final rule was published on April 15, 1986 (51 FR 12700) that allowed HUD, during Fiscal Year 1986, to make reallocations to grantees in amounts not exceeding a cumulative allocation, to any grantee, of 160 percent of the total amount initially obligated to that grantee for Fiscal Years 1984, 1985 and 1986. During fiscal years after 1986, the rule provided that HUD would not reallocate funds to any grantee that would result in an allocation to the grantee that exceeds 130 percent of the amount initially obligated to the grantee for the year involved.

This rule further revises § 511.33(b) to permit a reallocation for any fiscal year or years for which rehabilitation grant funds remain available for obligation, so long as the cumulative grant amount resulting from the reallocation (including previous original grants and reallocations) does not exceed 130 percent of the total amounts initially obligated to a grantee for those fiscal years.

This rule also clarifies how grantees that received (under the special rule applicable to FY 1986) reallocations in excess of 130 percent of their cumulative initially obligated amounts for combined fiscal years 1984, 1985 and 1986 are to be treated under the revisions to § 511.33(b). If a grantee received in Fiscal Year 1986, under the rule that governed reallocations made in that year only, a reallocation which resulted in a cumulative allocation to the grantee for Fiscal Years 1984, 1985 and 1986 in excess of 130 percent of the total amount initially obligated to the grantee for those years, such excess shall be excluded in computing the maximum reallocation amount allowable for the grantee.

The following examples indicate the amount of reallocated funds a grantee would be allowed to receive under this revised rule.

EXAMPLE 1: A GRANTEE THAT RECEIVED THE MAXIMUM AMOUNT OF REALLOCATED FUNDS DURING FISCAL YEAR 1986 (60 PERCENT OF CUMULATIVE INITIAL OBLIGATION AMOUNTS FOR FISCAL YEARS 1984, 1985 AND 1986)

FY	Initial obligation amount	Reallocated funds received during FY 1986	30% of initial obligation amount	Reallocated funds in excess of 30% of cumulative initial obligation amount
1984	$100,000	$60,000	$30,000	
1985	100,000	60,000	30,000	
1986	50,000	30,000	15,000	
Total FY 1984-1986	$250,000	$150,000	$75,000	$75,000
1987	$120,000			
Total FY 1984-1987	$370,000			

Based on this revised rule, the grantee in example 1 would be eligible for a maximum reallocation amount of $36,000 during Fiscal Year 1987 (30 percent of $370,000=$111,000 less $75,000=$36,000). Based on the rule in effect before this revision, this grantee would also have been eligible for $36,000.

EXAMPLE 2: A GRANTEE THAT HAS RECEIVED NO REALLOCATED FUNDS IN PRIOR FISCAL YEARS

FY	Initial obligation amount	Reallocated funds received during FY 1986	30% of initial obligation amount	Reallocated funds in excess of 30% of cumulative initial obligation amount
1984	$100,000	$0	$30,000	
1985	100,000	0	30,000	
1986	50,000	0	15,000	
Total FY 1984-1986	$250,000	$0	$75,000	$0
1987	$120,000			
Total FY 1984-1987	$370,000			

Based on this revised rule, the grantee in example 2 would be eligible for a maximum reallocation amount of $111,000 (30 percent of $370,000=$111,000 less 0=$111,000). Based on the rule in effect before this revision, this grantee would have been eligible for only $36,000.

EXAMPLE 3: A GRANTEE THAT HAS RECEIVED THE MAXIMUM AMOUNT OF REALLOCATED FUNDS FOR FISCAL YEAR 1984 DURING 1986 AND NO REALLOCATED FUND FOR FISCAL YEAR 1985 AND FISCAL YEAR 1986

FY	Initial obligation amount	Reallocated funds received during FY 1986	30% of initial obligation amount	Reallocated funds in excess of 30% of cumulative initial obligation amount
1984	$100,000	$60,000	$30,000	
1985	100,000	0	30,000	
1986	50,000	0	15,000	
Total FY 1984-1986	$250,000	$60,000	$75,000	$0
1987	$120,000			
Total FY 1984-1987	$370,000			

Based on this revise the grantee in example 3 would be eligible for a maximum reallocation amount of $51,000 during Fiscal Year 1987 (30 percent of $370,000=$111,000, less $60,000=$51,000). Based on the rule in effect before this revision, this grantee would have been eligible for only $36,000.

Finally, the rule provides that reallocated funds may come from any fiscal year's appropriation for which funds are available for reallocation. This means that the particular year's appropriation must not have lapsed, and funds also must have become available for reallocation as described above and in § 511.33(c). It also means that § 511.33(b) provides only one, cumulative, grant obligation figure that may not be exceeded by reallocation. The reallocation actually given to the grantee may come entirely from funds appropriated for only one of the fiscal years, provided of course that neither the cumulative reallocation ceiling for the grantee nor the appropriation for the fiscal year for which the funds were appropriated is exceeded.

Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause of major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because statutorily eligible grantees and State recipients are relatively larger cities, urban counties or States, and the rental rehabilitation funds to be made available through reallocation to any grantee are relatively small in relation to other sources of Federal funding for State and local government and in relation to private investment in rental housing.

The subject matter of this rulemaking action relates to grants and is therefore exempt from the notice and public comment requirements of section 553 of the Administrative Procedure Act. As a matter of policy, the Department submits many rulemaking actions with such matter to public comment, notwithstanding the statutory exemption. The Secretary has determined that in this instance notice and prior public comment are unnecessary and contrary to the public interest, and that good cause exists for making this rule effective as soon after publication as possible. Under the current rule, reallocation authority is constrained both in amount and timing, compared to the revised rule contained herein. Under the rule as currently worded, no funds may be reallocated to a grantee during FY-1987 until an initial grant obligation is made for FY-1987. Because of delay in publishing FY-1987 allocations and making grants based thereon, reallocations are also delayed, and some productive grantees that have used all previous grants amounts awarded to them are in danger of losing program momentum. Furthermore, once grants are made in FY-1987, there will be only a very limited time to make reallocations, and then there will be another hiatus in reallocation authority until FY-1988 grants are made. If the current rule were published for comment, it is likely that no reallocations at all could be made under its provisions during FY-1987. In addition, the non-cumulative aspect of

the current reallocation ceiling means that grantees that started slowly but that now have used all their funds can receive only a relatively small, total reallocation, compared to grantees that started more quickly and that have previously received reallocations. These "slow start" grantees are being deprived of funds just as their momentum has built to the point where they need additional resources.

It is inefficient and contrary to the public interest to permit funds to remain with grantees that have had an equal opportunity to use them and have not done so, while other grantees with the ability to use additional resources are marking time because of lack of funds. HUD has a responsibility to see that program funds are used responsibly and efficiently for the purpose intended. The current reallocation ceiling language in § 511.33(b) is impeding HUD's exercise of this responsibility, and it must be amended as quickly as possible.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.230.

List of Subjects in 24 CFR Part 511

Administrative practice and procedure, Grant programs—Housing and community development, Low and moderate income housing, Rental rehabilitation grants, Reporting and recordkeeping requirements.

Accordingly, 24 CFR 511.33 is amended as follows:

PART 511—RENTAL REHABILITATION GRANT PROGRAM

1. The authority citation for Part 511 continues to read as follows:

Authority: Sec. 17, U.S. Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 511.33, the section heading and paragraph (b) are revised to read as follows:

§ 511.33 Reallocation of rental rehabilitation funds.

* * * * *

(b) *Reallocation of rental rehabilitation funds within the fiscal year.* Except for end of fiscal year reallocations as provided in paragraph (d) of this section, HUD will reallocate rental rehabilitation funds that are available in any fiscal year to such grantee or grantees as HUD determines to be appropriate to promote the expeditious use of grant amounts, consistent with the sound development and administration of grantees' rental rehabilitation programs. During any Federal fiscal year following Fiscal Year 1986, HUD will not reallocate rental rehabilitation funds to any grantee if the amount reallocated would result in a cumulative grant obligation for that grantee for that fiscal year, and for any previous fiscal year for which rental rehabilitation grant funds remain available for obligation, that exceeds 130 percent of the total amount initially obligated to the grantee for those fiscal years. If the grantee has not yet received its initial grant for the fiscal year during which a reallocation is made, HUD will not reallocate to the grantee, until the initial grant for the fiscal year is made, funds that would result in a cumulative obligation to the grantee that exceeds 130 percent of the total amount initially obligated to that grantee for previous fiscal years for which funds remain available for obligation. If, during Fiscal Year 1986 under the rule that governed reallocations made in that year only, a grantee received a reallocation which resulted in a cumulative obligation to that grantee for Fiscal Years 1984, 1985 and 1986 in excess of 130 percent of the total amount initially obligated to that grantee for those years, the amount in excess of 130 percent shall be excluded in computing the cumulative allocation to that grantee for purposes of making reallocations under this paragraph. Reallocated funds may come from any fiscal year's appropriation for which funds are available for reallocation.

* * * * *

Dated: July 1, 1987.

Jack R. Stokvis,

Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 87-15474 Filed 7-7-87; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Parts 750, 751, and 757

General, Personnel, and Affirmative Claims Regulations; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its General Claims, Personnel Claims, and Affirmative Claims Regulations. This regulation reflects changes in the Judge Advocate General Instruction 5800.7B series from which it is derived. This revision is intended to update and clarify these agency procedural rules for better understanding by the public.

EFFECTIVE DATE: August 7, 1987.

FOR FURTHER INFORMATION CONTACT: CDR M.D. Hannas, Office of the Judge Advocate General, Claims and Tort Litigation, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone: (202) 325-9880.

SUPPLEMENTARY INFORMATION: Parts 750, 751, and 757 of Chapter VI, Title 32 of the Code of Federal Regulations, derived from the Judge Advocate General Instruction 5800.7B series, are being amended to update and clarify Department of the Navy (DON) claims procedures. This regulation involves an established body of technical regulations.

Routine amendments are necessary to keep them operationally current. Since this regulation contains only minor technical amendments to DON claims procedures, notice and public comment under 5 U.S.C. 553(b) are unnecessary.

The Department of the Navy has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), is not subject to the relevant provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), and does not contain reporting or record keeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 32 CFR Parts 750, 751 and 757.

Administrative practice and procedure.

For the reasons set out in the preamble, Title 32, Chapter VI, Subchapter E of the Code of Federal Regulations, is amended as set forth below.

PART 750—GENERAL CLAIMS REGULATIONS

1. The authority citation for Part 750 is revised to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 2733, 5031, and 5148; 31 U.S.C. 3701-3721; 32 CFR 700.206 and 700.1202.

2. Part 750 is amended by removing the footnotes throughout the Part.

3. In § 750.3, paragraph (d) is redesignated as paragraph (e) and a new paragraph (d) is added to read as follows:

§ 750.3 Investigation: requirements.

* * * * *

(d) *Opening claim file and disclosure of personal information.* When an investigation is commenced or a claim is filed, whichever occurs first, a claim file should be opened by the naval activity most directly involved. Because this file will probably contain personal information solicited from the claimant or witnesses, all such files must bear a cover-sheet for recording and accounting for disclosures of information from the file about identifiable individuals. Appendix A–3–a of the "Manual of the Judge Advocate General" is a suggested format for this purpose. The "Manual of the Judge Advocate General" may be examined at the Office of the Judge Advocate General, Law Library, Room 9S47, 200 Stovall Street, Alexandria, Virginia. Disclosure of personal information from the claim file is governed by the Privacy Act of 1974 (5 U.S.C. 552a) and SECNAVINST 5211.5 series. It is important to note that unauthorized disclosure of such information could subject the discloser to criminal penalties.

* * * * *

4. Section 750.4 is amended by revising the paragraph heading to paragraph (c) to read as follows:

§ 750.4 Investigation: responsibility for.

* * * * *

(c) *Report of motor vehicle accident, standard form 91, RCS OPNAV 5100–6.*

* * *

5. Section 750.7 is amended by revising paragraphs (a)(5) through (a)(16) and paragraph (b), and by adding paragraphs (a)(17) and (a)(18) to read as follows:

§ 750.7 The investigative report: contents.

(a) * * *

(5) Names, grades, organizations, and addresses of military personnel and civilian employees involved as participants or witnesses. Regardless of whether an individual is a naval member or employee, he should not be requested to provide his social security number in connection with the investigation. This will obviate the need for giving the individual a social security number statement under the Privacy Act (5 U.S.C. 552a). If necessary in a particular investigation, the number can generally be obtained from other available records.

(6) Names and addresses of witnesses.

(7) The Privacy Act statement for each party or witness who was asked to furnish personal information about himself after 26 September 1975. Noncompliance with this requirement should be explained in the preliminary statement to the investigative report and, when required, remedied in accordance with section 0308, of the "Manual of the Judge Advocate General."

(8) A recommendation as to whether military personnel and civilian employees involved were acting in the line of duty, or scope of their employment, as defined in § 750.31(b). The report shall contain statements and copies of records which bear on this issue for evaluation by the adjudicating authority.

(9) Accurate description of Government property involved and nature and amount of damage, if any. If Government property was not damaged, that fact should be stated.

(10) Accurate description of all privately owned property involved, nature and amount of damage, if any, and the names and addresses of the owners thereof.

(11) Names, addresses, and ages of all civilians or military personnel injured or killed; information as to the nature and extent of injuries, degree of permanent disability, prognosis, period of hospitalization, name and address of attending physician and hospital, and amount of medical, hospital, and burial expenses actually incurred; occupation and wage or salary of civilians injured or killed; and names, address, ages, relationship, and extent of dependency of survivors of any such person fatally injured.

(12) If straying animals are involved, a statement whether the jurisdiction has an "open range law" and, if so, reference to such statute.

(13) A statement as to whether any person involved violated any state or Federal statute, local ordinance, or installation regulation and, if so, in what respect. The statute, ordinance, or regulation should be set out in full.

(14) A statement as to whether a police investigation was made. A copy of the police report of investigation should be included if available.

(15) A statement as to whether arrests were made or charges preferred, and the result of any trial or hearing in civil or military courts.

(16) The comments and recommendations of the investigating officer as to the existence of liability; as to the amount of the damage, loss or destruction, or the amount payable on account of personal injury or death; and as to whether and to what extent such liability, damage, loss, destruction, personal injury or death is covered by insurance companies concerned, or is covered by a contractual agreement to indemnify the Government.

(17) As many exhibits or enclosures as are pertinent and are secured in connection with the performance of duties under § 750.6 shall be obtained during the course of the investigation and shall be attached to the investigative report, forming a part thereof. The enclosures shall be numbered consecutively and shall be listed numerically in the investigative report in accordance with standard Navy correspondence procedure. Report control Symbol JAG 5890–4 is assigned to this report.

(18) The preliminary statement to a report of an investigation into a claim under the Federal Tort Claims Act should include the following language: "This investigation has been conducted and this report is being prepared in contemplation of litigation and for the express purpose of assisting attorneys representing the interests of the United States in this matter."

(b) *Limited investigation and report.* In lieu of the comprehensive investigation contemplated by § 750.6 and the detailed report described in paragraph (a) of this section, a more limited investigation and report may be made under certain circumstances. This limited report will take the form of a certification and should provide substantially as set forth in Appendix A–20–c of the "Manual of the Judge Advocate General." Report Control Symbol JAG 5890–14 is assigned to this report. This more limited investigation and report may be made when the following circumstances exist:

(1) A claim has been presented for an amount of $600 or less;

(2) The claim is cognizable under the Federal Tort Claims Act (Subject B of this part) or the Military Claims Act (Subpart C of this part); and

(3) The amount payable on the claim has been agreed upon.

6. Section 750.8 is amended by revising the first and third sentences of paragraph (a), and the first sentence of paragraph (b), and by adding a final sentence to paragraph (a) to read as follows:

§ 750.8 The investigative report: action by the commanding officer or officer in charge.

(a) *Action.* If a claim is likely to arise, the investigative report shall be reviewed, and if additional investigation is required or omissions or other deficiencies are noted, the investigation should be promptly forwarded with an endorsement indicating that a supplemental investigative report will be submitted. * * * If the original and supplemental report is in order, it shall

be forwarded by endorsement, with any pertinent comments and recommendations. * * * An advance copy of the investigation shall be forwarded to the naval legal service office having territorial responsibility for the area where the incident giving rise to the claim occurred as indicated in appendix A-20-f(1) to the "Manual of the Judge Advocate General."

(b) *Claim.* If a claim has been filed, the original claim and all copies filed by the claimant and the original investigative report shall be forwarded by means of the aforementioned endorsement to the appropriate adjudicating authority, "Attention: Commanding Officer (of the appropriate Naval legal service office), or the (cognizant) staff judge advocate." * * *

7. Section 750.9 is revised to read as follows:

§ 750.9 The investigative report: action by reviewing authority.

(a) *Forwarding.* A reviewing authority may direct that additional investigation be conducted, if considered necessary. The initial investigation should not be returned for such additional investigation, but should be forwarded by an endorsement indicating that supplemental material will be submitted. The report shall be endorsed and forwarded to the next-level authority with appropriate recommendation including an assessment of the responsibility for the incident and a recommendation as to the disposition of any claim which may subsequently be filed. If a reviewing authority may be an adjudicating authority for a claim subsequently filed, one copy of the report shall be retained by such authority for at least 2 years after the incident.

(b) *Privacy Act requirements.* It is essential that each investigative report reflect that a good faith effort was made to comply with the Privacy Act of 1974 (5 U.S.C. 552a) and SECNAVINST 5211.5 series. Any indication of noncompliance shall be explained either in the preliminary statement or the following endorsements and when required, remedied in accordance with section 0308 of the "Manual of the Judge Advocate General" (JAGMAN). The appropriate officer listed in Appendix A-20-f of the JAGMAN has the responsibility to ensure that remedial action is taken to rectify noncompliance indicated in the investigative report prior to forwarding the report to the Judge Advocate General.

(c) *When a claim has been filed.* If a claim has been filed, see § 750.16. When a claim is received, all holders of the investigative report shall be notified.

8. Section 750.12, is amended by revising the second sentence of paragraph (b) to read as follows:

§ 750.12 Claims: presentment of.

* * * * *

(b) *To whom submitted.* * * * Otherwise, it shall be submitted to the commanding officer of any naval activity, preferably the one within which, or nearest to which, the incident occurred, or to the Judge Advocate General of the Navy, 200 Stoval Street, Alexandria, Virginia 22332-2400. * * *

9. In § 750.13, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), and a new paragraph (b) is added to read as follows:

§ 750.13 Claims: contents of.

* * * * *

(b) *Privacy Act advice.* When any person making a claim for damage or injury is requested by a person acting on the Government's behalf to supply personal information which will be made a part of the claim file, the person making the request shall first provide the individual a Privacy Act statement in duplicate containing the particular advice prescribed in SECNAVINST 5211.5 series, in accordance with section 0308, JAGMAN. The Standard Form 95 which was issued in 1978 contains a Privacy Act Statement (See Appendix A-20-a(a) of the JAGMAN). Otherwise, the original is to be signed by the claimant and made a part of the claim file, and the copy should be retained by the claimant. If the information from the claimant is requested orally, the Privacy Act statement should be orally summarized and explained as necessary to ensure that the claimant fully understands it.

* * * * *

10. Section 750.13 is amended by adding the following sentences following the last sentence of paragraph (c)(2) to read as follows:

§ 750.13 Claims: contents of.

* * * * *

(c) * * *

(2) * * * The claimant may also be required to provide additional information including: his date and place of birth; the names and ages of parents and grandparents and, if any be dead, the age at and cause of death; the names and ages of brothers and sisters, serious illnesses suffered by any of them, and, if any be dead, the age at and cause of death; the date and place of all marriages, and the names and ages of all children; the dates of, places at and reasons for hospitalization or physician's care in the preceding 10 years, as well as the names and addresses of all hospitals and attending physicians; the extent of use of alcohol and tobacco products; musical or artistic skills, remarkable mechanical skills, recreational activities, and membership in social and religious organizations; the names and addresses of all employers in the preceding 10 years and the nature of the work performed for each; and the value of any interest in real estate, jewelry, stocks and bonds, savings and checking accounts, vehicles, boats, furniture, life insurance policies, annuities and other investments. The claimant may be required to provide copies of Federal, state, and local tax returns for the preceding 10 years and in a wrongful death case copies of the will, estate tax return, inventory, and preliminary or final accounting.

* * * * *

11. Section 750.16, is amended by removing the last sentence of paragraph (c)(2) and by revising paragraph (e) to read as follows:

§ 750.16 Claims: action by adjudicating authority.

* * * * *

(e) Litigation reports. (1) A litigation report is a letter addressed to the Department of Justice or the U.S. Attorney, as appropriate, containing a narrative summary of the pertinent facts upon which the lawsuit is based. Although most litigation reports originate from the Claims Division of the Office of the Judge Advocate General, the Judge Advocate General will normally request that the cognizant commanding officer, naval legal service office, or staff judge advocate provide a litigation report when suit is filed by a claimant and the claim has not yet been forwarded to the Judge Advocate General by the adjudicating authority in accordance with § 750.23 and in other cases when considered appropriate. The litigation report should be sent directly to the cognizant United States Attorney unless otherwise directed, with copies of the report and all enclosures forwarded to the Department of Justice and the Judge Advocate General.

(2) Section 1331b.(1) of the "Manual of the Judge Advocate General", provides that requests for release of JAG Manual investigations, including enclosures, outside the Department of the Navy, shall be forwarded to the Assistant Judge Advocate General (Military Law) for determination. The only exception to this rule is in the case of affirmative claims files. See section 1331 of the "Manual of the Judge Advocate General" for further information.

12. Section 750.21, is amended by revising the first sentence of paragraph (a), the first sentence of paragraph (b), and the last sentence of paragraph (c) to read as follows:

§ 750.21 Claims: action required upon notice of suit.

(a) *Action required of any Navy official receiving notice of suit.* The commencement, under the civil action provisions of 28 U.S.C. 1346(b), of any action against the United States, involving the Navy, which comes to the attention of any officer in connection with his official duties, shall be reported immediately to the commanding officer of the appropriate naval legal service office who shall initiate any necessary administrative action and shall give further prompt notification to the Judge Advocate General. * * *

(b) *Steps upon commencement of civil action.* Upon receipt by the Judge Advocate General of notice from the Department of Justice, or from any other source, that an action involving the Navy has been instituted against the United States under the civil action provisions of 28 U.S.C. 1346(b), a request shall be made to the commanding officer of the appropriate naval legal service office for an investigative report of the incident giving rise to the action if a complete report of the incident has not already been received. * * *

(c) * * * In addition, the commanding officer of the appropriate naval legal service office shall determine if an administrative claim has been filed, and, if records show no claim to have been received, the Judge Advocate General, the Department of Justice, and the United States Attorney shall be promptly notified of this fact.

* * * * *

13. Section 750.23 is revised to read as follows:

§ 750.23 Disclosure of information.

Release of information from official naval records, including JAG Manual and claims investigations and claims files shall be governed by SECNAVINST 5211.5 series and SECNAVINST 5720.42 series, respectively. To determine which instruction governs a particular demand or request for information, see section 1331, JAGMAN. It is noted that, when requests for copies of JAG Manual Investigations are processed under SECNAVINST 5720.42 series, endorsements, findings of fact, opinions, recommendations, and other intra- and inter-agency advisory communications which become part of these investigations frequently may be withheld from public disclosure as exempt under exemption 5 of the Freedom of Information Act (5 U.S.C. 552(b)(5)) when the withholding will serve a significant and legitimate governmental purpose. Similarly, the release of portions of information from personnel and medical records and similar files may be determined, in some cases, to constitute a clearly unwarranted invasion of personal privacy, thus justifying the withholding of that information under exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)). The fact that particular information could provide the basis of a claim against the United States, or the fact that particular information would invade an individual's privacy in an unwarranted manner, might constitute a significant and legitimate governmental purpose for invoking a statutory exemption, if available, to deny a request for release under the Freedom of Information Act. For recording disclosures of information from "systems of records" as defined by the Privacy Act (5 U.S.C. 552a), see section 0308 and Appendix A–3–b(1), JAGMAN. For a broader statement concerning the production of information from official naval records, whether in response to a court order or in the absence of a court order, see part C of Chapter XIII, "Manual of Judge Advocate General."

14. Section 750.24, is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 750.24 Single-service assignment of responsibility for processing of claims.

* * * * *

(b) * * *

(2) Department of the Navy: Ethiopia, Iceland, Italy, and Portugal.

(3) Department of the Air Force: Australia, Canada, Denmark, Egypt, Greece, Greenland, India, Japan, Nepal, Luxembourg, Netherlands, Norway, Oman, Pakistan, Saudi Arabia, Spain, Turkey, and the United Kingdom.

* * * * *

15. Section 750.32 is amended by revising the last sentence of paragraph (e)(2) to read as follows:

§ 750.32 Statutory authority.

* * * * *

(e) * * *

(2) * * * See § 720.20(c).

16. Section 750.52, is amended by revising paragraph (b) to read as follows:

§ 750.52 Statutory authority.

* * * * *

(b) *Authorization for payment of claims in excess of $25,000.* If the Secretary of the Navy considers that a claim in excess of $25,000 is meritorious and would otherwise be covered by 10 U.S.C. 2733 and paragraph (a) of this section, he may make a partial payment of $25,000 and refer the excess to the General Accounting Office for payment from appropriations provided therefor. See 31 U.S.C. 724a (Supp. III 1979).

* * * * *

17. Section 750.53 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 750.53 The administrative claim.

* * * * *

(c) *Evidence and information in support of the claim.* See § 750.13 for the evidence and information required to substantiate a claim. * * *

* * * * *

PART 751—PERSONNEL CLAIMS REGULATIONS

1. The authority citation for Part 751 is revised to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 2733, 5031, and 5148; 31 U.S.C. 3701–3721; 32 CFR 700.206 and 700.1202.

2. Part 751 is amended by removing the footnotes throughout the part.

3. Section 751.2 is revised to read as follows:

§ 751.2 Scope.

(a) *Maximum payable.* Under this chapter, claims are settled and paid for damage to or loss of personal property of service personnel and civilian employees of the Navy and Marine Corps. The loss must be incident to service, and possession of the property must be reasonable, useful, or proper under the circumstances. The maximum amount allowable per incident on a claim is $25,000.

(b) *Exception in evacuation/terrorist cases.* For losses incurred in foreign countries on or after 31 December 1978, if such loss or damage results from acts of mob violence, terrorist attacks, or other hostile acts directed against the United States Government or its officers or employees, or occurs as a result of an evacuation of personnel in accordance with a recommendation or order of the Secretary of State or other competent authority which was made in response to incidents of political unrest or hostile acts by people in that country, the maximum amount payable per incident on a claim is $40,000. The factual background concerning cases which appear to fall within this category shall be reported to the Judge Advocate General (Claims and Tort Litigation) for a determination as to the applicability of this subsection and for specific adjudication authority.

4. Section 751.3, is amended by revising paragraph (i)(3)(iii) to read as follows:

§ 751.3 Claims payable.

* * * * *

(i) * * *

(3) * * *

(iii) "Other unusual occurrence" does not include collision with another vehicle resulting from a traffic accident, a "hit and run", or a single-vehicle collision attributable to driver error. The term "vehicle" includes motor vehicles and non-motorized vehicles used for transportation. See § 751.4(g).

* * * * *

5. In § 751.4, paragraph (u) is added to read as follows:

§ 751.4 Claims not payable.

* * * * *

(u) *Inconvenience expenses.* The expenses associated with the late delivery of household goods including but not limited to the expenses of food, lodging and furniture rental. While such a claim does not lie against the Government, the adjudicating authority and/or legal assistance officer should assist the member in filing his inconvenience expense claim with the commercial carrier concerned.

6. Section 751.21 is amended by revising the third sentence of paragraph (f)(1)(ii) to read as follows:

§ 751.21 Recovery action in transportation and storage losses.

* * * * *

(f) * * *

(1) * * *

(ii) * * * If after 30 days from the date of the final demand, reimbursement from the carrier has not been received, the case file should be forwarded to the Commanding Officer, Naval Material Transportation Office, Code 023, Building 2133–5, Naval Station, Norfolk, Virginia, 23511, requesting that the amount demanded by the final demand be setoff against subsequent Government bill of lading earnings.

* * *

* * * * *

7. Section 751.22 is amended by removing the last sentence of paragraph (b) and by adding a last sentence to paragraph (d) to read as follows:

§ 751.22 Preparation of claims investigating officer's report.

* * * * *

(d) * * * The foregoing small-claims procedure is not applicable to claims by Marine Corps personnel.

* * * * *

8. Section 751.23 is amended by adding the following last sentence to the introductory text of § 751.23 to read as follows:

§ 751.23 Action by Command Officer.

* * * Where replacement in kind is not possible because of the transfer of functions from the local retail clothing stores (small stores) to the Navy Exchange, normal claims procedures should be followed.

* * * * *

9. Section 751.24 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(v), (a)(1)(vi), (a)(2), (a)(3)(i), (a)(5), (a)(6), (b), (d), and the second to last sentence of (e) to read as follows:

§ 751.24 Adjudicating authority.

(a) * * *

(1) The following are authorized to adjudicate and authorize payment of personnel claims up to $25,000:

* * * * *

(v) Commandant, Naval District Washington and his/her staff judge advocate,

(vi) Commanding Officers of naval legal service offices

* * * * *

(2) The following are authorized to adjudicate and authorize payment of personnel claims up to $10,000: The Staff Judge Advocate attached to Naval Base Guantanamo; Naval Base, Roosevelt Roads; Naval Station, Panama Canal.

(3) * * *

(i) Officers in charge of naval legal service office detachments;

* * * * *

(5) Any Navy judge advocate may be authorized to adjudicate personnel claims up to $25,000 when specifically designated by the Judge Advocate General;

(6) Any naval officer, when personally designated by the Judge Advocate General, is authorized to adjudicate and authorize payment of personnel claims up to $1,000, and

* * * * *

(b) *Claims by Marine Corps personnel.* (1) The following are authorized to adjudicate and authorize payment of personnel claims up to $25,000:

(i) Commandant of the Marine Corps;

(ii) Deputy Chief of Staff;

(iii) Director, Manpower Plans and Policy Division; and

(iv) Head, Human Resources Branch.

(2) The following is authorized to adjudicate and authorize payment of personnel claims up to $2,500:

(i) Head, Personal Affairs Section.

(3) The following are authorized to adjudicate and authorize payment of personnel claims up to $1,500:

(i) Head, Personnel Claims Unit; and

(ii) Deputy Head, Personnel Claims Unit.

* * * * *

(d) *Partial payments when hardship exists.* (1) Every instance of loss or damage cognizable under this chapter can be expected to cause some degree of inconvenience to the claimant and/or his family. When the magnitude of the loss or damage is such that the claimant needs funds to feed, clothe or house himself or his family properly, the adjudicating authority may authorize a partial payment of an appropriate amount, normally one-half of the estimated total payment. When a partial payment has been made, a copy of the payment voucher and all other information related to the partial payment will be placed in the claimant's claim file, and other necessary action will be taken to ensure that the amount of the partial payment is deducted from the adjudicated value of the claim when final payment is made. Each authorization of partial payment must be accompanied by:

(i) A statement signed by the claimant requesting advance payment and setting forth in detail the circumstances of the loss or damage, the extent of the loss or damage, the estimated total value of his claim, his awareness that any amount advanced will be in partial payment of his claim and will not constitute a final settlement of the claim, an agreement to pay checkage if the amount advanced exceeds the amount allowed following final adjudication by the appropriate adjudicating authority, and a statement that he is aware of the penalties imposed by Title 18 section 287 of the United States Code for willfull making a false claim. The claimant may present his statement on a Personnel Claim form (DD Form 1842 with DD form 1845 attached) for the purpose of compliance with this requirement.

(ii) A statement by the claims investigating officer confirming that the claimant is a proper claimant under the provisions of this chapter and setting forth his opinion regarding the reasonableness, amount, and type of additional substantiation necessary before investigation of the claim can be completed and any other information relevant to the hardship of the claimant or his family.

(iii) A statement by the adjudicating authority certifying that the claim is cognizable under the provisions of this chapter and that the final adjudicated value of the claim is expected to exceed the amount of the partial payment authorized in accordance with the terms of this section.

(2) Inasmuch as all claims by Marine Corps personnel (military and civilian), except claims by nonappropriated fund employees, are adjudicated within Headquarters Marine Corps, Washington, D.C., and there are no field adjudicating authorities for Marine Corps personnel, the Marine claimant's Commanding Officer shall ensure compliance with all requirements of § 751.24(d)(1) (i) through (iii), and may request authority for payment by message from the Commandant (Code MHP–40).

(e) *Replacement in kind.* * * * Accounting data for replacement of uniform items is: 97–0102 Claims, Department of Defense, subhead 1341, fiscal year current at the time of approval, object class 042, bureau of control number 13003, authorization accounting activity 065872, transaction type 2D, cost code 000000099250. * * *

* * * * *

10. Section 751.25 is amended by revising paragraph (b) to read as follows:

§ 751.25 Limitation on agent or attorney fees.

* * * * *

(b) *Federal tort claims distinguished.* The above-quoted provision which does not require that an attorney's fees be fixed in, and be made a part of, the award adjudicating the claim, is different from an otherwise similar provision concerning certain Federal tort claims as described in § 750.39.

* * * * *

11. Section 751.28 is revised to read as follows:

§ 751.28 Reconsideration and appeal.

(a) *General policy.* (1) A claim may be reconsidered which was previously disapproved in whole or in part, even though final settlement has been made, when it appears that the original action was erroneous or incorrect in law or in fact based on the evidence of record at the time of the action or as subsequently submitted. Where a claim is denied either in whole or in part, the claimant shall be given written notification of the initial adjudication and of the right to submit a written request for reconsideration to the original adjudicating authority within six months from the date the claimant receives notice of the initial adjudication of the claim. Any adjudicating authority may reconsider a claim upon which that authority has originally acted upon the request of a claimant or someone acting in the claimant's behalf, and may settle it by granting such relief as may be warranted. If it is determined that the original action was erroneous or incorrect, it shall be modified and, if appropriate, a supplemental payment shall be approved. A claim which has been denied in whole or in part may be reconsidered on the adjudicating authority's own initiative.

(2) The forwarding endorsement of all adjudicating authorities shall contain specific reasons why the claim was denied, in whole or in part, or why the requested relief was not granted, and shall address the specific points or complaints raised by the claimant's request for reconsideration.

(b) *Appeals procedure for claims submitted by Navy personnel.* If an adjudicating authority does not grant the relief requested, or otherwise resolve the claim to the satisfaction of the claimant, the request for reconsideration shall be forwarded, together with the entire original file and the adjudicating authority's recommendation, to the nearest appropriate $25,000 adjudicating authority for final disposition. Final reconsideration of claims initially adjudicated by $25,000 adjudicating authorities will be made by the Judge Advocate General (See § 751.24(a)).

(c) *Appeals procedure for claims submitted by Marine Corps personnel.* Where Marine Corps adjudicating authorities listed in § 751.24(b)(1) fail to grant the relief requested, or otherwise resolve the claim to the satisfaction of the claimant, the request for reconsideration shall be forwarded, together with the entire original file and the adjudicating authority's recommendation, to the Judge Advocate General. Appeals of claims adjudicated by all other Marine Corps adjudicating authorities will be forwarded in the same manner as above to the Director, Personnel Services Division, Headquarters Marine Corps, for final disposition.

12. Section 751.30 is amended by revising paragraphs (a), (b), (c), (d), the first sentence of the introductory text of paragraph (e), and (e)(4) to read as follows:

§ 751.30 List of commands that have received funding authority and accounting data from the Judge Advocate General.

* * * * *

(a) *$25,000 Authorities.*

1. NAVLEGSVCOFF Philadelphia
2. NAVLEGSVCOFF Norfolk
3. NAVLEGSVCOFF Charleston
4. NAVLEGSVCOFF Great Lakes
5. NAVLEGSVCOFF San Diego
6. NAVLEGSVCOFF Treasure Island
7. NAVLEGSVCOFF Seattle
8. NAVLEGSVCOFF Pearl Harbor
9. NAVLEGSVCOFF Newport
10. NAVLEGSVCOFF Memphis
11. NAVLEGSVCOFF Corpus Christi
12. NAVLEGSVCOFF Washington
13. NAVLEGSVCOFF Pensacola
14. NAVLEGSVCOFF Jacksonville
15. NAVLEGSVCOFF Naples
16. NAVLEGSVCOFF Subic
17. NAVLEGSVCOFF Guam
18. NAVLEGSVCOFF Yokosuka
19. NAVLEGSVCOFF Long Beach
20. NSC Oakland

(b) *$10,000 Authorities.*

21. COMNAVFORCARIB Roosevelt Roads
22. COMNAVBASE Guantanamo Bay
23. NAVSTA Panama Canal

(c) *$5,000 Authorities.*

24. NAVLEGSVCOFFDET New London
25. NAVLEGSVCOFFDET Key West
26. NAVLEGSVCOFFDET Sigonella
27. NAVLEGSVCOFFDET Orlando
28. NAVLEGSVCOFFDET Whidbey Island
29. NAVLEGSVCOFFDET Lemoore
30. NAVLEGSVCOFFDET Rota
31. NAVLEGSVCOFFDET New Orleans
32. NAVLEGSVCOFFDET London
33. NSC Puget Sound

(d) *$1,000 Authorities.*

34. NSC Charleston
35. NAS Kingsville
36. NAS Chase Field, Beeville
37. NAS Pensacola
38. NAS Brunswick
39. NAS Meridian
40. NAS Bermuda
41. NAVSTA Keflavik
42. NAVSTA Mayport
43. NAVSTA Adak
44. NAF Sigonella
45. NAF Atsugi
46. NAF Midway
47. NAVFAC Argentia
48. COMFLEACT Okinawa
49. COMFLEACT Sasebo
50. ADMINSUPU Bahrain
51. NAVPGSCOL Monterey
52. CBC Gulfport
53. NAVAIRTESTCEN Patuxent River
54. NAVAIRENGCEN Lakehurst
55. NAVORDFAC Sasebo
56. NAVCOMMSTA Harold E. Holt
57. NAVSUPPO La Maddalena
58. NAVSECGRUACT Misawa
59. NAVWPNCEN China Lake
60. COMUSFORAZ Lages
61. NAVAL SHIPYARD Portsmouth

(e) In addition to the foregoing, naval officers attached to the following commands have been designated $1,000 adjudicating authorities by name by the Judge Advocate General by separate correspondence in accordance with § 751.24(a)(6). * * *

* * * * *

4. NSC San Diego

* * * * *

PART 757—AFFIRMATIVE CLAIMS REGULATIONS

1. The authority citation for Part 757 is revised to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 31 U.S.C. 3701–3721; 42 U.S.C. 2651–53; 32 CFR 700.206 and 700.1202.

2. Part 757 is amended by removing the footnotes throughout the part.

3. Section 757.2 is amended by revising paragraphs (b)(2) and (c) to read as follows:

§ 757.2 Authority of the Judge Advocate General and JAG designees.

* * * * *

(b) * * *

(2) Any cognizant JAG designee after considering the factors set forth in § 757.5, may compromise or waive any claim not in excess of $40,000 and issue a release therefor.

(c) *Claims exceeding $40,000.* Claims in excess of $40,000 may be compromised, settled, and waived only with the prior approval of the Department of Justice.

* * * * *

§ 757.3 [Amended]

4. Section 757.3 is amended by adding the following sentences to the end of paragraph (a), and by revising paragraphs (b), (c), (d), and (f)(3) to read as follows:

(a) * * * NAVJAG Form 5890/12 is located in Appendix A-24-d of the "Manual of the Judge Advocate General." The "Manual of the Judge Advocate General" may be examined at the Office of the Judge Advocate General, Law Library, Room 9S47, 200 Stovall Street, Alexandria, Virginia. Block 4 of this form requires an appended statement of the patient or an accident report, if available. Prior to requesting such a statement from a patient, the person preparing the front side of NAVJAG Form 5890/12 shall show the patient the Privacy Act statement printed at the botton of the form and shall have the patient sign his name beneath the statement.

(b) *Computations.* The front side of NAVJAG Form 5890/12 shall be computed by using the rates set out in Appendix A-24-c (1) and (2) of the "Manual of the Judge Advocate General." All computations by medical personnel and any necessary recomputations will be made pursuant to § 757.2e.

(c) *Submission of the front side of NAVJAG Form 5890/12.* The front side of NAVJAG Form 5890/12 shall be submitted to action JAG designee at the following times:

(1) An "initial" submission of the front side of NAVJAG Form 5890/12 shall be made as soon as practicable after the patient is admitted for inpatient care of any duration, or when more than seven outpatient treatments will be furnished. The "initial" submission need not be based upon an extensive investigation of the cause of the injury or disease, but it should include all known facts. Statements by the patient, police reports, and similar information (if available) should be appended to the form.

(2) An "interim" submission of the front side of NAVJAG Form 5890/12 shall be made every four months after the "initial" submission, until the patient is released, transferred, or changed from an inpatient to an outpatient status.

(3) A "final" submission of the front side of NAVJAG Form 5890/12 shall be made upon completion of treatment or upon transfer of the patient to another hospital. The hospital to which the patient is transferred should be noted on the form. Report Control Symbol 5890-1 is assigned to this report.

(d) *Supplementary documents.* A narrative summary (Standard Form 502) should accompany the final submission of the front side of NAVJAG Form 5890/12 in all cases involving inpatient care. In addition, when Government care exceeds $1,000, the hospital should complete and submit to the action JAG designee the back side of NAVJAG Form 5890/12 (see Appendix A-24-d(2) of the "Manual of the Judge Advocate General". On this part of the form, the determination of "patient status" may be based on local hospital usage.

* * * * *

(f) * * *

(3) *U.S. Coast Guard.*

Commandant (G-LCL/34), U.S. Coast Guard Headquarters, 2100 Second Street NW., Washington, DC 20593

* * * * *

5. Section 757.8 is amended by revising the last sentence in the section to read as follows:

§ 757.8 Statistical reports.

* * * Report Control Symbol JAG-5890-11 is assigned to this report.

6. Section 757.13 is amended by revising the introductory text of § 757.13 and paragraph (d) and by removing and reserving paragraph (f) to read as follows:

§ 757.13 Reference material.

The following aids and reference materials are contained in Appendix A-24 of the "Manual of the Judge Advocate General":

* * * * *

(D) A-24-d. NAVJAG Form 5890/12, (Rev. 3-78), "Hospital and Medical Care 3rd Party Liability Case,"

* * * * *

(f) [Reserved]

* * * * *

7. Section 757.15, is amended by revising paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) to read as follows:

§ 757.15 Pursuit, settlement and termination of claims.

(a) * * *

(1) The Judge Advocate General; the Deputy Judge Advocate General; any Assistant Judge Advocate General; and the Deputy Assistant Judge Advocate General (Claims and Tort Litigation);

(2) The commandants of all naval districts who are not served by naval legal service offices, and their district judge advocates;

(3) The officers in charge of all naval legal service offices, except naval legal service offices in countries where another service has single-service responsibility;

(4) Commanders, commanding officers, and officers in charge of overseas commands with a Navy or Marine Corps judge advocate attached, except in countries where another service has single-service responsibility.

* * * * *

8. Section 757.16 is amended by revising the first sentence of paragraph (c) and by adding paragraph (d) to read as follows:

§ 757.16 Collection of claims.

* * * * *

(c) *Rental automobile deductible damage claims.* When a rental automobile is damaged while in the possession of service personnel or Government employees on official business and a part of the damages are paid or reimbursed by the Government in accordance with Joint Travel Regulations (Volume 1, paragraph M 4405-1 and Volume 2, paragraph C 2102-2) officers authorized to take collection action under this Part shall endeavor to collect the amount of the Government's loss from any third-parties liable in tort. * * *

(d) *Property of nonappropriated-fund activities.* In instances of recovery because of loss or damage to property of a nonappropriated-fund activity, the amount recovered should be forwarded to the appropriate headquarters of the nonappropriated-fund activity for deposit to that activity. In those situations where the recovery involves damage to both nonappropriated-fund-activity-owned property and other government property, e.g., destruction by fire of an Exchange building resulting in damage to the building and to the Exchange-owned personal property contained therein, recovery from the tortfeasor for the Exchange-owned personal property should be forwarded to the nonappropriated-fund activity. Recovery for the building damage should be deposited to the Navy general fund receipt accounts as indicated in

§ 757.16(a). Appropriate documentation should be included in every claims file.

Dated: July 2, 1987.

Jane M. Virga,

LT, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 87-15429 Filed 7-7-87; 8:45 am]

BILLING CODE 3810-AE-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP4F3007, 4E3026, 4F3074/R898; FRL 3222-8]

Pesticide Tolerances for 1-[[2-(2,4-Dichlorophenyl)-4-Propyl-1,3-Dioxolan-2-yl[Methyl]-1-H-1,2,4-Triazole and its Metabolites; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule that established tolerances for residues of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1-H-1,2,4-triazole and its metabolits determined as 2,4-dichlorobenzoic acid, in or on certain raw agricultural commodities, published in the **Federal Register** of June 24, 1987 (52 FR 23654). The listings for various commodities, which were discussed in the preamble of the document, were inadvertently dropped from the codified text of the document when the Agency transmitted it for publication.

EFFECTIVE DATE: June 16, 1987.

FOR FURTHER INFORMATION CONTACT: By mail: Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: In FR Doc. 87-14322, in the **Federal Register** of June 24, 1987 (52 FR 23654), EPA established tolerances for residues of the subject fungicide by adding new 40 CFR 180.434. The various commodities to be included in the new section were discussed in the preamble of the document, but in transmitting the document for publication in the **Federal Register** the Agency inadvertently dropped the listings for a number of these in the codified text. Therefore, EPA is correcting 40 CFR 180.434 by adding in alphabetical sequence the missing entries, to read as follows:

§ 180.434 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Horses, meat	0.1
Horses, meat byproducts (except kidney and liver)	0.1
Milk	0.05
Pecans	0.1
Poultry, fat	0.1
Poultry, kidney	0.2
Poultry, liver	0.2
Poultry, meat	0.1
Poultry, meat byproducts (except kidney and liver)	0.1
Rice, grain	0.1
Rice, straw	3.0
Rye, grain	0.1
Rye, straw	1.5
Sheep, fat	0.1
Sheep, kidney	0.2
Sheep, liver	0.2
Sheep, meat	0.1
Sheep, meat byproducts (except kidney and liver)	0.1
Wheat, grain	0.1
Wheat, straw	1.5

Authority: 21 U.S.C. 346a.

Dated: June 29, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-15280 Filed 7-7-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 7E3494/R897; FRL-3229-7]

Pesticide Tolerance for Aluminum Tris(O-Ethylphosphonate)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide aluminum tris(*O*-ethylphosphonate) in or on the raw agricultural commodity asparagus. The Interregional Research Project No. 4 (IR-4) petitioned for this tolerance.

EFFECTIVE DATE: Effective on July 8, 1987.

ADDRESS: Written objections, identified by the document control number [PP 7E3494/R897], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of May 6, 1987 (52 FR 16878), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 7E3494 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of California.

The petitioner requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the fungicide aluminum tris(*O*-ethylphosphonate) in or on the raw agricultural commodity asparagus at 0.1 part per million (ppm). The petitioner proposed that this use of the fungicide on asparagus be limited to California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or

establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d), 68 Stat. 512 (21 U.S.C. 346a(d)).)

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 26, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.415 is amended by designating the current paragraph and list of tolerances as paragraph (a) and by adding new paragraph (b), to read as follows:

§ 180.415 Aluminum tris(O-ethylphosphonate); tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the fungicide aluminum tris(*O*-ethylphosphonate) in or on the following raw agricultural commodity:

Commodity	Part per million
Asparagus	0.1

[FR Doc. 87-15464 Filed 7-7-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Ch. II, III, IV, and X

Correction of Headings To Reflect Establishment of the Family Support Administration

AGENCY: Family Support Administration (FSA), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects a technical error in final regulations published in the **Federal Register** on April 7, 1987 (52 FR 11073) to revise the name of several chapter headings contained in 45 CFR Chapters II, III, IV, and X to reflect the placement of certain programs within the Family Support Administration.

EFFECTIVE DATE: April 7, 1987.

FOR FURTHER INFORMATION CONTACT: Howard Rolston, (202) 245-0392.

SUPPLEMENTARY INFORMATION: The regulation published April 7, 1987 (52 FR 11073) contained a technical error. Outdated Catalog of Federal Domestic Assistance Programs numbers appeared at the end of the regulation. The references to Catalog of Federal Domestic Assistance should have read:

(Catalog of Federal Domestic Assistance Programs. Program No. 13.780, Assistance Payments—Maintenance Assistance; Program No. 13.783, Child Support Enforcement; Program No. 13.787, Refugee and Entrant Assistance—State Administered Programs; Program No. 13.792, Community Services Block Grants; Program No. 13.790, Work Incentives Program)

Dated: June 30, 1987.

James V. Oberthaler,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 87-15488 Filed 7-7-87; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

Oversight of Radio and TV Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends broadcast regulations in 47 CFR Parts 73 and 74. Amendments are made to correct inaccurate rule texts, contemporize certain requirements and to execute editorial revisions as needed for clarity and ease of understanding.

EFFECTIVE DATE: July 8, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Policy and Rules Division, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION: In this Order, modifications are made to update, delete, clarify or correct regulations in Title 47, Code of Federal Regulations. Adopted June 12, 1987; released June 29, 1987.

Order

In the matter of oversight of the radio and TV broadcast rules; DA 87-748.

Adopted: June 12, 1987.

Released: June 29, 1987.

By the Chief, Mass Media Bureau:

1. In this *Order*, the Commission focuses its attention on the oversight of its radio and TV broadcast rules. Modifications are made herein to update, delete, clarify or correct broadcast regulations as described in the following amendment summaries:

(a) Section 73.1020, Station license period, provides that, ordinarily, radio broadcast station licenses will be renewed for 7 years and TV broadcast station licenses for 5 years.

The 7 and 5 year renewal periods were enacted into law pursuant to the Omnibus Budget Reconciliation Act of 1981. Pub. L. 97-35, 95 Stat. 357. The legislation amended section 307 of the Communications Act, extending the maximum 3 year license term previously adhered to.

In accord with the intent of Congress, the Commission applied the longer license terms in an orderly fashion by renewing, for the longer periods, on the dates stations became due for their regularly scheduled renewals, following the legislation's enactment. The licenses of stations in the first group of States listed in § 73.1020(a)(1) expired on October 1, 1981; expiration dates of the final group of States, as shown in paragraph (a)(18), was August 1, 1984.

In this *Order*, we bring license expirations up to date, and also begin stating these dates for radio and TV station license expirations separately to conform to the new 7 and 5 year terms.

(b) Appropriate revisions will also be made in § 74.15, Station license period, to show expiration dates for licenses of low power TV and TV and FM translator stations.

(c) We also add herein the expiration dates of licenses of stations in the U.S. Trust Territory, The Mariana Islands, heretofore unnoted in these sections.

(d) To guarantee the continuing timeliness of station expiration dates in §§ 73.1020 and 74.15, we will review them annually in the future. The review will take place just prior to October 1, the closing date for changes in each year's new edition of Title 47, Code of Federal Regulations, thus assuring the correct dates will be stated in new CFR's each year. (See rule items 2 and 3).

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amendments are implemented by authority delegated by the Commission to the Chief, Mass

Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are inapplicable pursuant to the Administrative Procedure Act. 5 U.S.C. 553(b)(3)(B).

4. Since a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

5. Accordingly, it is ordered, That pursuant to sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Parts 73 and 74 are amended as set forth below, effective on the date publication in the **Federal Register.**

6. For further information on this *Order,* contact Steve Crane, (202) 632-5414, Mass Media Bureau.

List of Subjects in 47 CFR Parts 73 and 74

Radio broadcasting.

Federal Communications Commission,
James C. McKinney,
Chief, Mass Media Bureau.

Rule Changes

47 CFR Parts 73 and 74 are amended as follows:

1. The authority citation for Parts 73 and 74 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 73.1020 is amended by revising paragraph (a) to read as follows:

§ 73.1020 Station license period.

(a) Initial licenses for broadcast stations will ordinarily be issued for a period running until the date specified in this section for the State or Territory in which the station is located. If issued after such date, it will run to the next renewal date determined in accordance with this section. Radio broadcasting stations will ordinarily be renewed for 7 years and TV broadcast stations will be renewed for 5 years. However, if the FCC finds that the public interest, convenience and necessity will be served thereby, it may issue either an initial license or a renewal thereof for a lesser term. The time of expiration of normally issued initial and renewal licenses will be 3 a.m., local time, on the following dates and thereafter at 7-year intervals for radio broadcast stations and at 5-year intervals for TV broadcast stations located in:

(1) Maryland, District of Columbia, Virginia and West Virginia:
  (i) Radio stations, October 1, 1988
  (ii) Television stations, October 1, 1991
(2) North Carolina and South Carolina:
  (i) Radio stations, December 1, 1988
  (ii) Television stations, December 1, 1991
(3) Florida, Puerto Rico and the Virgin Islands:
  (i) Radio stations, February 1, 1989
  (ii) Television stations, February 1, 1992
(4) Alabama and Georgia:
  (i) Radio stations, April 1, 1989
  (ii) Television stations, April 1, 1992
(5) Arkansas, Louisiana and Mississippi:
  (i) Radio stations, June 1, 1989
  (ii) Television stations, June 1, 1992
(6) Tennessee, Kentucky and Indiana:
  (i) Radio stations, August 1, 1989
  (ii) Television stations, August 1, 1987
(7) Ohio and Michigan:
  (i) Radio stations, October 1, 1989
  (ii) Television stations, October 1, 1987
(8) Illinois and Wisconsin:
  (i) Radio stations, December 1, 1989
  (ii) Television stations, December 1, 1987
(9) Iowa and Missouri:
  (i) Radio stations, February 1, 1990
  (ii) Television stations, February 1, 1988
(10) Minnesota, North Dakota, South Dakota, Montana and Colorado:
  (i) Radio stations, April 1, 1990
  (ii) Television stations, April 1, 1988
(11) Kansas, Oklahoma and Nebraska:
  (i) Radio stations, June 1, 1990
  (ii) Television stations, June 1, 1988
(12) Texas:
  (i) Radio stations, August 1, 1990
  (ii) Television stations, August 1, 1988
(13) Wyoming, Nevada, Arizona, Utah, New Mexico and Idaho:
  (i) Radio stations, October 1, 1990
  (ii) Television stations, October 1, 1988
(14) California:
  (i) Radio stations, December 1, 1990
  (ii) Television stations, December 1, 1988
(15) Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon and Washington:
  (i) Radio stations, February 1, 1991
  (ii) Television stations, February 1, 1989
(16) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont:
  (i) Radio stations, April 1, 1991
  (ii) Television stations, April 1, 1989
(17) New Jersey and New York:
  (i) Radio stations, June 1, 1991
  (ii) Television stations, June 1, 1989
(18) Delaware and Pennsylvania:
  (i) Radio stations, August 1, 1991
  (ii) Television stations, August 1, 1989

* * * * *

3. Section 74.15 is amended by revising paragraphs (b) and (d) to read as follows:

§ 74.15 Station license period.

* * * * *

(b) Licenses for stations or systems in the Auxiliary Broadcast Service held by a licensee of a broadcast station will be issued for a period running concurrently with the license of the associated broadcast station with which it is licensed. Licenses held by eligible networks for the purpose of providing program service to affiliated stations under Subpart D of this Part, and by eligible networks, cable television operators, motion picture producers and television program producers under Subpart H of this Part will be issued for a period running concurrently with the normal licensing period for broadcast stations located in the same area of operation.

* * * * *

(d) Initial licenses for low power TV, TV translator and FM translator stations will ordinarily be issued for a period running until the date specified in this section for the State or Territory in which the station is located or, if issued after such date, to the next renewal date determined in accordance with this section. Low power TV and TV translator station licenses will ordinarily be renewed for 5 years and FM translator station licenses will be renewed for 7 years. However, if the FCC finds that the public interest, convenience or necessity will be served, it may issue either an initial license or a renewal thereof for a lesser term. The time of expiration of all licenses will be 3 a.m. local time, on the following dates and thereafter at 5 year intervals for low power TV and TV translator stations and at 7 year intervals for FM translator stations located in:

(1) Nevada:
  (i) FM translators, February 1, 1990
  (ii) LPTV and TV translators, February 1, 1988
(2) California:
  (i) FM translators, April 1, 1990
  (ii) LPTV and TV translators, April 1, 1988
(3) Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, West Virginia, Ohio and the District of Columbia:
  (i) FM translators, June 1, 1990
  (ii) LPTV and TV translators, June 1, 1988
(4) Virginia, North Carolina, South Carolina, Georgia, Florida,

Alabama, Mississippi, Louisiana, Arkansas, Missouri, Kentucky, Tennessee, Indiana, Illinois, Michigan, Wisconsin, Puerto Rico and the Virgin Islands:
(i) FM translators, August 1, 1990
(ii) LPTV and TV translators, August 1, 1988
(5) Oklahoma and Texas:
(i) FM translators, October 1, 1990
(ii) LPTV and TV translators, October 1, 1988
(6) Kansas and Nebraska:
(i) FM translators, December 1, 1990
(ii) LPTV and TV translators, December 1, 1988
(7) Iowa and South Dakota:
(i) FM translators, February 1, 1991
(ii) LPTV and TV translators, February 1, 1989
(8) Minnesota and North Dakota:
(i) FM translators, April 1, 1991
(ii) LPTV and TV translators, April 1, 1989
(9) Wyoming:
(i) FM translators, June 1, 1991
(ii) LPTV and TV translators, June 1, 1989
(10) Montana:
(i) FM translators, August 1, 1991
(ii) LPTV and TV translators, August 1, 1989
(11) Idaho:
(i) FM translators, October 1, 1988
(ii) LPTV and TV translators, October 1, 1991
(12) Washington:
(i) FM translators, December 1, 1988
(ii) LPTV and TV translators, December 1, 1991
(13) Oregon:
(i) FM translators, February 1, 1989
(ii) LPTV and TV translators, February 1, 1992
(14) Alaska, American Samoa, Guam, Mariana Islands and Hawaii:
(i) FM translators, April 1, 1989
(ii) LPTV and TV translators, April 1, 1992
(15) Colorado:
(i) FM translators, June 1, 1989
(ii) LPTV and TV translators, June 1, 1992
(16) New Mexico:
(i) FM translators, August 1, 1989
(ii) LPTV and TV translators, August 1, 1987
(17) Utah:
(i) FM translators, October 1, 1989
(ii) LPTV and TV translators, October 1, 1987
(18) Arizona:
(i) FM translators, December 1, 1989
(ii) LPTV and TV translators, December 1, 1987

* * * * *

[FR Doc. 87-15214 Filed 7-7-87; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70845-7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment and request for comments.

SUMMARY: NOAA announces and requests comment on an adjustment to recreational ocean salmon management measures in the subarea from the Queets River to Leadbetter Point, Washington. The adjustment modifies the closed area. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council (Council), the Oregon Department of Fish and Wildlife (ODFW), and the Washington Department of Fisheries (WDF), that the adjustment is necessary to conform to the chinook quotas established in the preseason announcement of 1987 management measures. This action is intended to extend the recreational season.

EFFECTIVE DATE: Modification of the closed area in the subarea from the Queets River to Leadbetter Point, Washington, is effective at 0001 hours local time, July 5, 1987. Comments on this notice will be received until July 20, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way N.E., Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director) at 206-526-6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are codified at 50 CFR Part 661. Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 6, 1987). The 1987 recreational fishery for all salmon species north of Cape Falcon, Oregon, is divided into three subareas. The recreational season in all three subareas began on June 28 and will continue through the earliest of September 24, attainment of subarea chinook or coho quotas, or attainment of overall troll and recreational chinook or coho quotas for the area between Cape Falcon, Oregon, and the U.S.-Canada border.

For the subarea from the Queets River to Leadbetter Point, the area from 0-3 nautical miles offshore is closed. The subarea has quotas of 28,000 chinook and 74,300 coho salmon.

Based on the best available information, the recreational fishery in the subarea from the Queets River to Leadbetter Point is estimated to have caught from 15-20 percent of the subarea chinook quota during the first three days of the fishery, June 28-30, 1987. Inseason action is necessary to slow the catch of chinook and to extend the recreational season.

Therefore, NOAA issues this notice to adjust the recreational salmon fishery in the exclusive economic zone (EEZ) from the Queets River to Leadbetter Point, Washington, by modifying the closed area. In addition to the closure from 0-3 nautical miles, a new closure is implemented from 3-6 nautical miles offshore from Cape Shoalwater (46°44'06" N. latitude) to Point Brown (46°55'42" N. latitude), Washington.

This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in this or other areas.

The Regional Director consulted with the Chairman of the Council and representatives of ODFW and WDF regarding this inseason adjustment for the recreational fishery from the Queets River to Leadbetter Point, Washington. The WDF representative confirmed that Washington will manage the recreational fishery in state waters adjacent to this area of the EEZ in accordance with this federal action.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: July 2, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-15490 Filed 7-2-87; 4:39 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 130
Wednesday, July 8, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 87-085]

Importation of Animals; Import Inspection and Quarantine Facility in Los Angeles, CA

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: APHIS is considering closing its animal import inspection and quarantine facility in Los Angeles, California. The facility has been underutilized since 1984, and the low public demand for services there does not justify the cost of maintaining the facility. In order to help the agency decide whether to close this facility, comments are being requested from the public.

DATE: Consideration will be given only to comments postmarked or received on or before September 8, 1987.

ADDRESSES: Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-085. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Jr., Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 809, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) govern the importation into the United States of certain animals and animal products. They require that certain animals be quarantined when they arrive in this country. There are two types of quarantine facilities: facilities that APHIS operates; and privately operated facilities.

The agency operates quarantine facilities at Los Angeles, California; Miami, Florida; Honolulu, Hawaii; and Newburgh, New York. (See § 92.3(a) of the regulations.) Except for animals that are not otherwise eligible to be imported and that come from countries affected with exotic diseases such as foot-and-mouth disease,[1] these facilities can handle any animals being imported into the United States.

The agency opened the Los Angeles quarantine facility in 1984, immediately prior to the 1984 Summer Olympic Games, to assure that sufficient quarantine space for all horses being imported for the Olympics would be available.

Since then, the facility has been consistently underutilized, and revenues do not cover expenses. There does not appear to be enough demand for quarantine services in Los Angeles to justify the cost of maintaining the facility. Therefore, the agency is considering closing it. Importers would still be able to import animals into the United States through other agency-operated import quarantine facilities and through privately operated facilities at various ports of entry. (See § 92.3(b)-(h) of the regulations.

Before the agency decides whether to close this facility, comments are being requested.

(7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, 135; 7 CFR 2.17, 2.51, 371.2(d))

Done at Washington, DC, this 2nd day of July, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-15480 Filed 7-7-87; 8:45 am]

BILLING CODE 3410-34-M

[1] These animals can be imported, under certain conditions, into the United States through the Harry S Truman Animal Import Center at Fleming Key, Florida. This facility only handles animals that are not otherwise eligible to be imported and that come from countries affected with exotic diseases such as foot-and-mouth disease.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-67-AD]

Airworthiness Directive; Cessna Model 140A Airplanes et al.; Withdrawal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking (NPRM).

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) Docket 86-CE-67-AD, applicable to certain Cessna model airplanes, which was published in the **Federal Register** on January 6, 1987 (52 FR 435). The NPRM proposed to adopt an Airworthiness Directive (AD), that would require modification of the airplanes by installing springs on carburetor throttle shafts allowing the throttle to open when the airplane throttle control separates from the carburetor. Subsequent evaluation of public comments to the NPRM indicates strong opposition to the proposed AD. Based upon these comments and a complete technical reevaluation of the proposal, the FAA is withdrawing this NPRM.

FOR FURTHER INFORMATION CONTACT: Paul O. Pendleton, Aerospace Engineer, ACE-140W, FAA, Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone 316-946-4427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring installation of springs on carburetor throttle shafts in certain Cessna 100 series airplanes was originally published in the **Federal Register** on January 6, 1987 (52 FR 435), and the extension of the comment period was published in the **Federal Register** on February 9, 1987 (52 FR 4021). The proposal resulted from NTSB reported accidents and incidents of engine power loss and forced landings. The engine power loss is considered to have occurred because the engine throttle control became disconnected from the carburetor arm. Subsequently, the control arm vibrates to the low power (idle) position.

Interested persons have been afforded an opportunity to comment on the

proposal. Eight commentors responded. Two commentors supported issuance of the AD in its proposed form. Four commentors were opposed to issuance of the AD. Two commentors offered neutral comments. The opposition is based primarily on the following concerns: (1) It has not been shown that the installation of the throttle return spring will prevent future airplane accidents, (2) it is believed that the throttle return spring is ineffective, (3) the throttle return spring provides very little spring force and actually serves as a bias for system friction, (4) the throttle return spring will not, in all cases, perform its intended function, (5) adequate corrective actions have been taken (AD 86-24-07 and 72-06-05) to prevent the unsafe and condition addressed in this proposal, (6) selection of a new failure mode (full power) not presently addressed in today's flight training may adversely affect safety. The commentors opposed to issuance of the AD stated that they believed a new failure mode was being introduced, that being full power, and previous pilot training dealt only with a complete loss of power. The new failure mode alluded to by the commentors has existed in the fleet on those airplanes originally equipped with throttle opening springs. Therefore, there have been both loss of engine power and full engine power occurrences resulting from detachment of the throttle control. After further consideration, the FAA believes the issuance of AD's 86-24-07 and 72-06-05 will prevent future separations of the engine throttle control from the carburetor arm resulting in correction of the reported unsafe condition. Also the throttle return spring acts as a bias in the system resulting in no predictable selection of power and therefore is virtually ineffective.

Withdrawal of Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration deletes a proposal to amend § 39.13 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised), Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. NPRM Docket No. 86-CE-67-AD, published in the **Federal Register** on January 6, 1987 (52 FR 435), is withdrawn.

Issued in Kansas City, Missouri, on June 16, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-15414 Filed 7-7-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 87-AWA-6]

Proposed Alteration of Jet Routes; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of seven jet routes and revoke one jet route located in the vicinity of New York. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by New England, Great Lakes and the Southern Regions. This proposal is Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action would reduce en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, save fuel and reduce controller workload. The EECP is being implemented in coordinated segments until completed.

DATES: Comments must be received on or before August 7, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 87-AWA-6, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Indepedence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of Jet Routes J-174, J-190, J-191, J-193, J-208, J-209, J-211 and revoke J-221 located in the vicinity of New York. Currently, east coast traffic flows are saturated and

compressed in the New York metropolitan area to the point that substantial delays are experienced daily. To alleviate the congestion, which causes delays, this proposed EECP would provide optimum use of airspace along the heavily traveled coastal corridors between New York and Florida and reduce departure/arrival delays in the Boston, MA; Chicago, IL; Atlanta, GA; and New York areas. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-174 [Amended]

By removing the words "Wilmington, NC;" and substituting the words "Wilmington, NC; Dixon NDB, NC;"

J-190 [Amended]

By removing the words "to Rockdale, NY." and substituting the words "Rockdale, NY; to Albany, NY."

J-191 [Amended]

By removing the words "From Coyle, NJ, via Kenton, DE;" and substituting the words "From Robbinsville, NJ via INT Robbinsville 228° T (238° M) and Kenton, DE, 035° T (044° M) radials; Kenton;"

J-193 [Revised]

From Wilmington, NC; Cofield, NC; Harcum, VA; to INT Harcum 006° T (013° M) and Hopewell, VA, 030° T (036° M) radials.

J-208 [Revised]

From Athens, GA; Liberty, NC; INT Liberty 054° T (057° M) and Hopewell, VA, 231° T (237° M) radials; to Hopewell.

J-209 [Amended]

By removing the words "to Norfolk, VA." and substituting the words "Norfolk, VA; INT Norfolk 023° T (030° M) and Salisbury, MD, 199° T (207° M) radials; to Salisbury."

J-211 [Amended]

By removing the words "From Johnstown, PA, via INT Johnstown 129° and Westminster, MD, 292° radials;" and substituting the words "From Youngstown, OH; Johnstown, PA; INT Johnstown 129° T (135° M) and Westminster, MD, 292° T (300° M) radials;"

J-221 [Removed]

Issued in Washington, DC, on June 25, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-15415 Filed 7-7-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 87-AWA-5]

Proposed Alteration of Jet Routes; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of eight jet routes located in the vicinity of New York. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by New England, Great Lakes and the Southern Regions. This proposal is Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action would reduce en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, save fuel and reduce controller workload. The EECP is being implemented in coordinated segments until completed.

DATES: Comments must be received on or before August 7, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 87-AWA-5, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rule Docket, weekdays, except Federal holidays, between 8:30 a.m., and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-5." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA

personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of Jet Routes J-110, J-121, J-134, J-147, J-149 J-150, J-152 and J-162 located in the vicinity of New York. Currently east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. To alleviate the congestion, which causes delays, this proposed EECP would provide optimum use of airspace along the heavily traveled coastal corridors between New York and Florida and reduce departure/arrival delays in the Boston, MA; Chicago, IL; Atlanta, GA; and New York areas. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for whch frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrent preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet Routes.

The Proposed Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-110 [Amended]

By removing the words "Coyle, NJ; to Kennedy, NY." and substituting the word"to Coyle, NJ."

J-121 [Amended]

By removing the words "Hampton; Providence, RI; to INT Providence 045 ° and Boston, MA, 066 ° radials." and substituting the words "Hampton, Sandy Point, RI; INT Sandy Point 031 ° T(046 ° M) amd Kennebunk, ME, 190 ° T(207 ° M) radials; to Kennebunk."

J-134 [Amended]

By removing the words "INT Henderson 083 ° and Shawnee, VA 262 ° radials; to Shawnee." and substituting the words "to Linden, VA."

J-147 [Amended]

By removing the words "to Gordonsville, VA." and substituting the words "to Casanova, VA."

J-149 [Amended]

By removing the words "From Casanova, VA, via INT of Casanova 280 ° and Rosewood, OH, 116 ° radials;" and substituting the words "From Armel, VA; INT Armel 273 ° T(281 ° M) and Rosewood, OH, 116 ° T(117 ° M) radials;"

J-150 [Amended]

By removing the words "From Gordonsville, VA, Via INT Gordonsville 059 ° and Woodstown, NJ, 230 ° radials; Woodstown; Robbinsville, NJ; Hampton, NY;" and substituting the words "From Gordonsville, VA; Nottingham, MD; INT Nottingham 061 ° T(071 ° M) and Woodstown, NJ, 225 ° T(235 ° M) radials; Woodstown; Coyle, NJ; INT Coyle 075 ° T(085 ° M) and Hampton, NY, 231 ° T(244 ° M) radials; Hampton;"

J-152 [Amended]

By removing the words "Harrisburg, PA; to INT Harrisburg 099 ° and Westminster, MD, 058 ° radials." and substituting the words "to Harrisburg, PA."

J-162 [Amended]

By removing the words ", INT of Bellaire 122 ° and Shawnee, VA, 288 ° radial; to Shawnee." and substituting the words "; INT Bellaire 133 ° T(137 ° M) and Morgantown, WV, 287 ° T(292 ° M) radials; Morgantown; to Martinsburg, WV."

Issued in Washington, DC, on June 25, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Divison.

[FR Doc. 87-15416 Filed 7-7-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 87-AWA-8]

Proposed Alteration of Jet Routes; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish four new jet routes located in the vicinity of New York. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by New England, Great Lakes and the Southern Regions. This proposal is Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action would reduce en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, save fuel and reduce controller workload. The EECP is being implemented in coordinated segments until completed.

DATES: Comments must be received on or before August 7, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 87-AWA-8, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filled in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to establish four new Jet Routes J-213, J-215, J-223 and J-227 located in the vicinity of New York. Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. To alleviate the congestion, which causes delays, this proposed EECP would provide optimum use of airspace along the heavily traveled coastal corridors between New York and Florida and reduce departure/arrival delays in the Boston, MA; Chicago, IL; Atlanta, GA; and New York areas. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-213 [Added]

From Armel, VA; INT Armel 251° T(259° M) and Beckley, WV, 066° T(072° M) radials; to Beckley.

J-215 [Added]

From Salisbury, MD; INT Salisbury 018° T(026° M) and Coyle, NJ, 226° T(236° M) radials; to Coyle.

J-223 [Added]

From LaGuardia, NY, via LaGuardia 310° T(322° M) and Elmira, NY, 110° T(119° M) radials; to Elmira.

J-227 [Added]

From Armel, VA; INT Armel 001° T(009° M) and Elmira, NY 193° T(202° M) radials; to Elmira.

Issued in Washington, DC, on June 26, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-15417 Filed 7-7-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 87-AWA-7]

Proposed Alteration and Establishment of Jet Routes; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of seven jet routes and establish two new jet routes located in the vicinity of New York. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by New England, Great Lakes and the Southern Regions. This proposal is Phase II of the Expanded East Coast Plan (EECP; Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action would reduce en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, save fuel and reduce controller workload. The EECP is being implemented in coordinated segments until completed.

DATES: Comments must be received on or before August 7, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 87-AWA-7, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made; "Comments to Airspace Docket No. 87-AWA-7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of Jet Routes J-228, J-518, J-522, J-547, J-563, J-573 and J-581 and establish Jet Routes J-222 and J-225 located in the vicinity of New York. Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. To alleviate the congestion, which causes delays, this proposed EECP would provide optimum use of airspace along the heavily traveled coastal corridors between New York and Florida and reduce departure/arrival delays in the Boston, MA; Chicago, IL; Atlanta, GA; and New York areas. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation Safety, Jet Routes.

PART 75—[AMENDED]

The Proposed Amendment.

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-222 [New]

From Robbinsville, NJ; INT Robbinsville 039° T(049° M) and Kennedy, NY, 253° T(265° M) radials; Kennedy; INT Kennedy 022° T(034° M) and Cambridge, NY, 179° T(193° M) radials; Cambridge; to Plattsburgh, NY.

J-225 [New]

From INT Woodstown, NJ 065° T(075° M) and Coyle, NJ, 264° T(274° M) radials; via INT Coyle 264° T(274° M) and Cedar Lake, NJ, 037° T(047° M) radials; INT Cedar Lake 037° T(047° M) and Kennedy, NY, 232° T(244° M) radials; Kennedy; INT Kennedy 038° T(050° M) and Hartford, CT 236° T(249° M) radials; Hartford; Putnam, CT; to Boston, MA.

J-228 [Amended]

By removing the words "Lancaster, PA; INT Lancaster 239° and Linden, VA 042° radicals; Linden; INT Linden 234° and Beckley, WV, 070° radials; to Beckley." and substituting the words "to Lancaster, PA."

J-518 [Revised]

From DRYER, OH; Indian Head, PA; INT Indian Head 106° T(112° M) and Baltimore, MD, 295° T(303° M) radials; to Baltimore.

J-522 [Amended]

By removing the words "to Huguenot, NY," and substituting the words "to Kingston, NY,"

J-547 [Amended]

By removing the words "Syracuse, NY; INT Syracuse 094° and Albany, NY, 058° radials;" and substituting the words "Syracuse, NY; Cambridge, NY;"

J-563 [Amended]

By removing the words "via INT of Albany 008° and Sherbrooke, PQ, Canada, 217° radials" and substituting the words "via INT of Albany 006° T(019° M) and Sherbrooke, PQ, Canada, 217° T(243° M) radials"

J-573 [Amended]

By removing the words "From Providence, RI, via INT Providence 045° and Kennebunk, ME, 180° radials; Kennebunk;" and substituting the words "From Kennebunk, ME;"

J-581 [Amended]

By removing the words "From Kenneay, NY, via INT of Kennedy 042° and Putnam, CT, 236° radials; Putnam;" and substituting the words "From Putnam, CT;"

Issued in Washington, DC, on June 26, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-15418 Filed 7-7-87; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3229-1]

40 CFR Parts 260, 261, 264, 265, 266, 270, and 271

Burning of Hazardous Waste in Boilers and Industrial Furnaces; Preamble Correction

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; Preamble correction.

SUMMARY: EPA is correcting errors in the preamble of the proposed rule for the burning of hazardous waste in boilers and industrial furnaces which appeared in the **Federal Register** on May 6, 1987 (52 FR 16982).

FOR FURTHER INFORMATION CONTACT: Dwight Hlustick at (202) 382-7917.

SUPPLEMENTARY INFORMATION: EPA has proposed regulations for the burning of hazardous waste in boilers and industrial furnaces. The rule was proposed on May 6, 1987 (52 FR 16982). Preamble Appendices A and B (52 FR 17031 and 17032) contained errors which are discussed briefly below and are corrected by this notice. The comment periods remain the same as in the May 6, 1987, notice (FRL 3153-5).

Dated: June 29, 1987.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

The following corrections are made in FRL 3153-5, "Burning of Hazardous Waste in Boilers and Industrial Furnaces," published in the **Federal Register** on May 6, 1987 (52 FR 16982-17050):

1. The following compounds, which were inadvertently identified as threshold pollutants in Appendix A to the preamble of the May 6th proposed regulation, are deleted from Appendix A of the preamble on pages 17031 and 17032: benzidine; chlordane; chloromethane; formaldehyde; methyl hydrazine; nickel; PCB's; 2,3,7,8-tetrachlorodibenzo-p-dioxin; and vinyl chloride. In addition, the annual average concentration for hydrogen chloride as stated in the proposed rule has been added to Appendix A. Also, 1,1-dichloroethane and 1,4-dichlorobenzene have been included in this appendix as well as the corrected concentrations for acrolein, diethyl phthalate, di-n-butyl phthalate, and pentachlorobenzene.

2. The above compounds, except nickel, which should have been shown as carcinogens in Appendix B to the preamble to the May 6th proposed regulation and that, by today's action, are being deleted from Appendix A, are added to Appendix B with their correct risk-specific doses. Nickel compounds, which are known or suspected carcinogens, were previously included in Appendix B. The corrected risk-specific doses for chloroform and 1,1,2,2-tetrachloroethane are also included in this notice.

3. The complete, corrected appendices are printed below:

APPENDIX A.—REFERENCE AIR CONCENTRATIONS (RACs) FOR THRESHOLD CONSTITUENTS

Constituent	Maximum annual average ground level concentration (ug/m³)
Acetonitrile	10
Acetophenone	500
Acrolein	10.0
Aluminum Phosphide	0.25
Allyl Alcohol	5
Antimony	0.25
Barium	50
Barium cyanide	50
Bis (2-ethylhexyl)phthalate	17
Bromomethane	0.7
Calcium cyanide	25
Carbon disulfide	200
2-chloro-1,3-butadiene	2.5
Chromium III	1,000
Copper cyanide	50
Cresols	100
Cyanide (free)	17
Cyanogen	25
Di-n-butyl phthalate	100
O-dichlorobenzene	10
1,4-chlorobenzene	10
1,1-dichloroethane	50
Dichlorodifluoromethane	170
2,4-dichlorophenol	2.5
1,3-dichloropropene	0.25
Diethyl phthalate	10,000
Dimethoate	1.0
2,4-dinitrophenol	1.0
Diphenylamine	225
Endosulfan	0.01
Endrin	0.05
Flourine	50
Formic acid	1,700
Heptachlor	0.1
Hexachlorocyclopentadiene	5
Hydrocyanic acid	17
Hydrogen chloride	15[a]
Hydrogen sulfide	2.5
Isobutyl alcohol	250
Lead	0.09
Mercury	1.7
Metholmyl	23
Methoxychlor	50
Methyl ethyl ketone	75
Methyl parathion	2.5
Nickel cyanide	17
Nitric oxide	25
Nitrobenzene	0.5
Pentachlorobenzene	1.0
Pentachlorophenol	25
Phenol	100
M-phenylenediamine	5
Phenylmercuric acetate	0.08
Phosphine	0.25
Potassium cyanide	50
Potassium silver cyanide	170
Pyridine	5
Selenious acid	2.5
Selenourea	5
Silver	5
Silver cyanide	100
Sodium cyanide	25
Strychinine	0.25
1,2,4,5-tetrachlorobenzene	0.25
2,3,4,6-tetrachlorophenol	10
Tetraethyl lead	1×10^{-4}
Thallic oxide	0.25
Thallium	500
Thallium (I) acetate	0.5
Thallium (I) carbonate	0.25
Thallium (I) chloride	0.5
Thallium (I) nitrate	0.5
Thallium selenite	0.5
Thallium (i) sulfate	0.5
Toluene	500
1,2,4-trichlorobenzene	17
Trichloromonofluoromethane	250
2,4,5-trichlorophenol	100
Vanadium penoxide	17

[a] A short term exposure RAC also applies to hydrogen chloride: a maximum ground level concentration of 150 ug/m³ over a three minute period.

APPENDIX B.—RISK SPECIFIC DOSES FOR CARCINOGENIC CONSTITUENTS AT 10^{-5} Risk Level

Constituent	Risk specific dose (ug/m³)
Acrylamide	9×10^{-3}
Acrylonitrile	1×10^{-1}
Aldrin	2×10^{-3}
Aniline	1
Arsenic	2×10^{-3}
Benz(a)anthracene	1×10^{-2}
Benzene	1
Benzidine	2×10^{-4}
Benzo(a)pyrene	3×10^{-3}
Beryllium	4×10^{-3}
Bis(2-chloroethyl)ether	3×10^{-2}
Bis(2-chloromethyl)ether	4×10^{-3}
Cadmium	6×10^{-3}
Carbon tetrachloride	7×10^{-1}
Chlordane	2×10^{-2}
1-Chloro-2,3-epoxypropane	8
Chloroform	4×10^{-1}
Chloromethane	3

APPENDIX B.—RISK SPECIFIC DOSES FOR CARCINOGENIC CONSTITUENTS AT 10^{-5} Risk Level—Continued

Constituent	Risk specific dose (ug/m³)
Chloromethyl methyl ether	$4x10^{-3}$
Chromium (hexavalent)	$8x10^{-4}$
DDT	$3x10^{-2}$
Dibenz(a,h)anthracene	$7x10^{-4}$
1,2-Dibromo-3-chloropropane	$2x10^{-3}$
1,2-Dibromoethane	$8x10^{-4}$
1,2-Dichloroethane	$4x10^{-1}$
1,1-Dichloroethylene	$2x10^{-1}$
Dieldrin	$2x10^{-3}$
Diethylstilbestrol	$7x10^{-5}$
Dimethylnitrosamine	$1x10^{-3}$
2,4-Dinitrotoluene	$1x10^{-1}$
Dioxane	7
Ethylene oxide	$1x10^{-1}$
Formaldehyde	$1x10^{-1}$
Hexachlorobenzene	2
Hexachlorobutadiene	$5x10^{-1}$
Hydrazine	$3x10^{-3}$
Hydrazine Sulfate	$3x10^{-3}$
3-Methylcholanthrene	$4x10^{-3}$
Methylene chloride	2
4,4-Methylene-bis-2-chloroaniline	$2x10^{-1}$
Methyl Hydrazine	$3x10^{-2}$
Nickel (carbonyl and subsulfide)	$3x10^{-2}$
2-Nitropropane	$4x10^{-3}$
N-Nitroso-n-methylurea	$1x10^{-3}$
N-Nitrosopyrrolidine	$2x10^{-2}$
PCBs	$8x10^{-3}$
Pentachloronitrobenzene	$1x10^{-1}$
Pronamide	2
Reserpine	$3x10^{-3}$
2,3,7,8 Tetrachlorodibenzo-p-dioxin	$2x10^{-10}$
1,1,2,2-Tetrachloroethane	$2x10^{-1}$
Tetrachloroethylene	21
Thiourea	$2x10^{-2}$
Trichloroethylene	8
Vinyl chloride	2

[FR Doc. 87-15467 Filed 7-7-87; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BERC-400-CN]

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1988 Rates; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule; correction.

SUMMARY: In the June 10, 1987 issue of the Federal Register (FR Doc. 87-13121), beginning on page 22080, we proposed to revise the Medicare inpatient prospective payment system to implement necessary changes arising from legislation and our continuing experience with the system. This notice corrects an inadvertent error we made in that document.

FOR FURTHER INFORMATION, CONTACT: Linda Magno, (301) 594-9343.

SUPPLEMENTARY INFORMATION: We are making the following correction to the June 10, 1987 document:

On page 22085, in the first column, the procedure group "Local Excision and Removal of Internal Fixation Devices of Hip and Femur" should be added to item 5 immediately following the procedure group "Local Excision and Removal of Internal Fixation Devices Except Hip and Femur."

(Sections 1102, 1122, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1320a-1, 1395hh, and 1395ww); 42 CFR Part 412) (Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: June 30, 1987.

James V. Oberthaler,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 87-15489 Filed 7-7-87; 8:45 am]
BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[General Docket 87-14]

Amendment of Part 2 of the Commission's Rules Regarding the Allocation of the 216-225 MHz Band.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time for reply comments.

SUMMARY: This action extends the time for filing reply comments to the *Notice of Proposed Rule Making (Notice)* in this proceeding concerning the allocation of the 216-225 MHz band. The Personal Communications Section of the Electronic Industries Association's Information and Telecommunications Technologies Group and the law firm of Keller and Heckman have requested an extension of time to respond to the high volume of comments submitted in response to the *Notice*. In order to develop as complete a record as possible in this proceeding, the Commission is extending the time for filing reply comments.

DATE: Reply comments are now due July 31, 1987.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Joseph P. Husnay, Office of Engineering and Technology, (202) 632-8112.

SUPPLEMENTARY INFORMATION: The Proposed Rule was published on February 27, 1987; 52 FR 6024.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 87-15207 Filed 7-7-87; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 15

[Gen. Docket No. 87-107]

Input Selector Switches Used in Conjunction With Cable Television Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time for reply comments; order extending time.

SUMMARY: Action taken herein extends the time for filing reply comments in response to the *Notice of Proposed Rule Making* in Gen. Docket No. 87-107. This *Notice* requested comments regarding the technical standards of input selector switches used in conjunction with cable television service. The Consumer Electronics Group of the Electronics Industries Association requested the extension of time.

DATE: Reply comments are due July 10, 1987.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Scott Roberts, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects Affected in 47 CFR Part 15.

Communications equipment, Radio.

Order Granting Request for Extension of Time to File Reply Comments

In the matter of Amendment of Part 15 of the Commission's rules concerning input selector switches used in conjunction with cable television service, Gen. Docket No. 87-107.

Adopted: June 18, 1987.

Released: June 24, 1987.

By the Acting Chief, Mass Media Bureau.

1. On April 8, 1987, the Commission adopted a *Notice of Proposed Rule Making* (*Notice*) in Gen. Docket 87-107, 52 FR, to consider the issue of technical standards for input selector switches used to alternate between cable and over-the-air television reception. Reply comments in this proceeding are currently due June 25, 1987.

2. On June 17, 1987, the Consumer Electronics Group of the Electronic Industries Association (EIA/CEG) requested that the date for filing reply comments in the above-captioned proceeding be extended to July 30, 1987. EIA/CEG stated that the alloted 15 day reply period is inadequate to analyze and respond to the voluminous and detailed comments filed by other parties.

3. As we stated in the *Notice*, we intend to complete action on this issue in an expeditious manner in order that manufacturers may supply switches in accordance with the scheduled implementation of the new input selector switch rules which went into effect June 10, 1987. In view of this, we do not believe that a five-week extension of the reply period, as requested by EIA/CEG, is justified. However, we recognize the significance of this matter to broadcasters, cable operators, switch manufacturers and the public. In this respect, we believe it is desirable to provide some additional opportunity to those parties wishing to file reply comments. Thus, we will extend the filing date for reply comments by 15 days.

4. Accordingly, it is ordered that the date for filing reply comments in response to the above-referenced *Notice of Proposed Rule Making* is extended to July 10, 1987. This action is taken pursuant to authority provided in section 4(i) of the Communications Act of 1934, as amended, and § 0.283 of the Commission's rules.

5. For further information concerning this proceeding, contact Scott Roberts, Mass Media Bureau, (202) 632-6302.

Federal Communications Commission,

William H. Johnson,

Acting Chief, Mass Media Bureau.

[FR Doc. 87-15217 Filed 7-7-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 245 and 253

Department of Defense Federal Acquisition Regulation Supplement; Government Property

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering changes to Subpart 245.5 and Part 253 of the Defense Federal Acquisition Regulation Supplement (DFARS), as well as a change to DAR Supplement No. 3, to incorporate an expanded reporting of DoD property in the custody of contractors.

DATE: Comments on the proposed rule should be submitted in writing to the DAR Council at the address shown below no later than September 8, 1987, to be considered in the formulation of the final rule. Please cite DAR Case 87-28 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)/DARS, c/o OUSD (A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

Note.—If commenters choose to hand-carry comments to the DAR Council Office at 1211 South Fern Street, Arlington, VA, arrangements for hand-carried comments must be made with the DAR Council Staff Members. Security Guards at this location are not permitted to accept or sign for hand-delivered comments of any kind.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The existing contractor reporting system began in 1967 and was formally implemented into the Armed Services Procurement Regulation (ASPR) in 1972. It was the outgrowth of congressional criticism in the mid-1960s. Since that time the system has been judged by critics to be inadequate and ineffective. The recent series of criticisms began six years ago with the GAO Report of August 7, 1980, "Weaknesses in Accounting for Government-Furnished Materials at Defense Contractors' Plants Lead to Excesses." Following congressional hearings in 1981, 1985, and 1986, DoD continues to be criticized for the lack of accounting and internal control over the Government property it provides to contractors. The most recent criticism is contained in the GAO Report NSIAD-86-109, June 19, 1986, which specifically addresses the lack of useful information available to DoD property managers with respect to the type, amount, and value of property provided to contractors.

On July 16, 1986, the Defense Government Property Council (DGPC), chaired by the Deputy Assistant Secretary of Defense for Production Support, approved the DD Form 1662 developed by the DGPC's Ad Hoc Group for property reporting and directed its implementation. The Office of Management and Budget subsequently approved the form in October 1986 and it was used by virtually all DoD contractors having Government property for the 1986 report under the DFARS deviation 86-931. The form requires the reporting of every category of Government property on hand at the beginning and the end of the fiscal year in dollars at acquisition cost; and quantity of each category for "other real property" which cannot be measured in quantities and "material" which quantities can change daily so as to make reporting unmanageable and not meaningful. The form also calls for the reporting of additions and deletions to the contract during the year for all categories except Government material. It should be noted that there is *no substantive difference* between Government material furnished by the Government (GFM) or by the contractor (CAM) other than the route by which the contractor gains possession. The former means only that the Government had title to the property before it was furnished for the instant contract; the latter meaning the Government gained title by virtue of the contractor's acquiring the material under the cost terms of the instant contract. The reporting of these two different types of Government material, however, is significant in helping to isolate policy and compliance problems.

This document also contains changes to DAR Supplement No. 3. DAR Supplement No. 3 is not codified in the Code of Federal Regulations; nor is it part of the subscription to the DoD FAR Supplement.

B. Regulatory Flexibility Act Information

The proposed rule will apply to all small businesses which are performing under DoD contracts which provide Government property (approximately 1,500). The impact on small businesses should be minimal since most are in compliance already with the proposed rule. Records were already required to be kept for each category of Government property under the Government Property clause. This proposed rule requires that data be transferred from existing records to a form. In some cases, the proposed requirement to report additions and

deletions of specific categories of property from the contract will cause some small businesses' Government property control system for recordkeeping to be revised but not outside very reasonable limits of good management. A Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy for the Small Business Administration.

C. Paperwork Reduction Act Information

On October 21, 1986, the Office of Management and Budget approved a paperwork burden increase of 38,000 hours to OMB Number 0704–0246 as a result of a deviation (DAR Case 86–931) to allow use of this coverage. This proposed rule does not change the reporting requirements approved on October 21, 1986. Another Paperwork Reduction Act analysis, therefore, is not required.

List of Subjects in 48 CFR Parts 245 and 253

Government procurement.

Owne L. Green, III,

Acting Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 245 and 253 be amended as follows:

1. The authority citation for 48 CFR Parts 245 and 253 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 245—GOVERNMENT PROPERTY

2. Section 245.505–14 is amended by revising paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 245.505–14 Reports of Government property.

(a) The contractor's property control system shall provide annually a report, by contract, of all DoD property for which the contractor is accountable, categorized as follows:

(1) Acquisition cost of:

(i) Land and rights therein;

(ii) OPE (See 245.301);

(iii) IPE (See 245.301);

(iv) Special test equipment to which the Government has title (see 245.101);

(v) Special tooling to which the Government has title (see 245.101);

(vi) Agency-peculiar (military) property including reparables and other end items or components for which the Government continues to maintain an asset record while it is with the contractor (see 245.301);

(vii) Government material, including Government-furnished and contractor-acquired (see 245.301 and 245.101).

(2) Quantity of:

(i) Land (in acres);

(ii) OPE;

(iii) IPE;

(iv) Special test equipment;

(v) Special tooling;

(vi) Agency-peculiar (military) property.

(3) Additions to and deletions from the contract, in dollars, of:

(i) Land and rights therein;

(ii) Other real property;

(iii) OPE;

(iv) IPE;

(v) Special test equipment;

(vi) Special tooling;

(vii) Agency-peculiar (military) property.

(b) The above report shall be as of September 30 each year.

Those property-bearing contracts which are closed with zero property balances prior to September 30 shall be reported at the time the property balances become zero. The prime contractor shall flow this reporting requirement to include DoD property in the possession of subcontractors. The prime contractor is responsible for reporting to DoD all property accountable to the contract, including that at subcontractor and alternate locations. The contractor shall prepare the report on DD Form 1662 (October 1986 or later version), DoD Property in the Custody of Contractors, or an approved substitute, and shall furnish it, in duplicate, to the property administrator no later than October 20 of each year. Office of Management and Budget No. 0704–0246 has been assigned to the report.

PART 253—FORMS

3. The list of forms following section 253.270 is amended by revising 253.303–70–DD–1662, the title for DD Form 1662 to read "DoD Property in the Custody of Contractors; in lieu of "Report of Government (DoD) Facilities".

DAR Supplement No. 3

4. Section S3–603 is amended by revising paragraphs (a), (b), and (c) to read as follows:

S3–603 Report of Property.

(a) The property administrator is responsible for obtaining the reports as prescribed in 245.505–14 of the DoD FAR Supplement for all contracts assigned for property administration including those for which supporting property administration was requested from other DoD CAS components. Reports should be accumulated and reviewed to determine that inputs are complete and that the DD Form 1662, October 1986 or later version, is properly filled out. Each report shall be processed to the Defense Logistics Agency (DLA) by November 10 of each year, either manually or electronically, in accordance with Departmental instructions. One copy shall be retained by the property administrator.

(b) The Defense Logistics Agency (DLA) shall receive, consolidate, and integrate the data and submit error listings to each administering department for correction, as required. DLA shall maintain the corrected data and provide reports, either in hard copy or electronically, as required or requestd by Departments or agencies.

(c) On NASA contracts, the annual contractor's report (NASA Form 1018), specified in NASA FAR Supplement 1845.106–70(d), will be transmitted by the property administrator to the NASA contracting officer's designee as identified in the property reporting clause (NASA FAR Supplement 1852.245–73) within ten working days after receipt of the report from the contractor.

[FR Doc. 87–15449 Filed 7–7–87; 8:45 am]

BILLING CODE 3810–01–M

Notices

Federal Register
Vol. 52, No. 130
Wednesday, July 8, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 3, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Economic Research Service
  U.S. Milled Rice Distribution Survey
  Biennally
  Businesses or other for profit; Small businesses or organizations; 20 responses; 80 hours; not applicable under 3504(h)
  Nathan W. Childs (202) 786-1840
- Economic Research Service
  Pesticide Situation and Outlook Survey
  Annually
  Businesses or other profit; 32 responses; 24 hours; not applicable under 3504(h)
  Stan Daberkow (202) 786-1456

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 87-15477 Filed 7-7-87; 8:45 am]

BILLING CODE 3410-01-M

National Commission on Dairy Policy; Advisory Committee Meeting

Pursuant to provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting.

Name: National Commission on Dairy Policy.

Time and Place: Hilton Inn, 2401 E. Lamar Blvd., Arlington, Texas 76006.

Status: Open.

Matters to be Considered: On July 15, beginning at 9:00 a.m., the Commission will hold a public hearing to receive testimony on the dairy price support program, new dairy technologies, and the influence of the program and technologies on the family farm.

Written Statements May be Filed Before or After the Meeting With: Contact person named below.

Contact Person For More Information: Mr. Jeffrey Lyon, Assistant Director, National Commission on Dairy Policy, 1401 New York Ave., NW, Suite 1100, Washington, DC 20005 (202) 638-6222.

Signed at Washington, DC, this 6th day of July, 1987.

David R. Dyer,

Executive Director, National Commission on Dairy Policy.

[FR Doc. 87-15588 Filed 7-7-87; 8:45 am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

Final Determinations Regarding Support Prices for Pulled Wool and Mohair for the 1987 Marketing Year

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of final determinations.

SUMMARY: This notice sets forth the final determinations concerning the price support levels for wool and mohair for the 1987 marketing year. These determinations are required to be made pursuant to the National Wool Act of 1954 ("the Wool Act"), as amended.

EFFECTIVE DATE: July 8, 1987.

ADDRESS: Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Janise A. Zygmont, Agricultural Economist, Commodity Analysis Division, ASCS, USDA, Room 3758, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 475-4645. The Final Regulatory Impact Analysis has been prepared and is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "not major." It has been determined that these final determinations will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since there is no requirement that the Commodity Credit Corporation (CCC) publish a notice of proposed rulemaking in accordance with 5 U.S.C. 553 or any other provision of law with respect to the subject matter of this notice.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environemntal Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The title and number of the Federal assistance program to which this notice applies are: National Wool Act Payments, 10.059, as found in the Catalog of Federal Domestic Assistance.

Background

Section 703(a) of the National Wool Act of 1954, as amended ("Wool Act"), provides that the Secretary of Agriculture shall support the prices of wool and mohair to producers by means of loans, purchases, payments, or other operations. The Secretary has determined that the prices of wool and mohair be supported for the 1986 to 1990 marketing years by means of payments to producers (51 FR 28852, August 12, 1986).

With respect to the 1986 through 1990 marketing years, section 703(b) of the Wool Act provides that the level of support for shorn wool for each of the marketing years shall be 77.5 percent of an amount which is determined by multiplying 62 cents (the support price in 1965) by the ratio of: (1) The average parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to (2) the average parity index for the three calendar years 1958, 1959, and 1960, rounding the result to the nearest full cent.

Section 703(c) of the Wool Act provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, as the Secretary of Agriculture determines will maintain normal marketing practices for pulled wool, and as the Secretary determines is necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Section 703(c) further provides that the support price for mohair must be within a range of 15 per centum above or below the comparable percentage of parity at which shorn wool is supported.

Proposed Determinations

On December 30, 1986, a notice of proposed determinations was published at 51 FR 47035, requesting comments concerning the method of calculating the price support levels for pulled wool and for mohair for the 1987 marketing year.

The notice also indicated that based on current reported parity indices the calculation for the 1987 shorn wool support price (grease basis) is $1.81 per pound computed as followed:

(1) Average parity index, calendar years 1983–1985	1118.7
(2) Average parity index, calendar years 1958–1960	297.3
(3) Ratio of 1118.7 to 297.3	3.7629
(4) 3.7629 x 62 cents per pound (1965 support price)	$2.3330
(5) 77.5 percent x 2.330	$1.8081
(6) 1.8081 rounded to nearest full cent	$1.81

With respect to the method of calculating the support price for pulled wool for the 1987 marketing year, the notice provided that the support price cannot be determined until the 1987 average market price for shorn wool is calculated, which would occur by April 1988. Once the average market price for shorn wool is known, the support price for pulled wool would be determined by subtracting the 1987 average market price for shorn wool from the 1987 support price of shorn wool and multiplying that number by 5 pounds which is the amount of wool pulled from the pelt of an average 100-pound lamb. The product would then be multiplied by 80 percent which is a quality adjustment factor which recognizes that unshorn lamb pelts contain a shorter staple and a lower quality wool than wool shorn from other sheep.

Also, the notice of proposed determinations provided that the support price for mohair for the 1987 marketing year would be determined based on the October 1986 parity prices for mohair and shorn wool and that the following percentages were being considered in the final computation of the mohair support price:

(1) 85 percent of the percent of parity at which shorn wool is supported.

(2) A percentage equal to the percent of parity at which shorn wool is supported.

(3) 115 percent of the percent of parity at which shorn wool is supported.

Discussion of Comments

A total of six comments (all with respect to mohair) were received. All respondents recommended that mohair be supported at a percentage of parity equal to the percentage of parity at which shorn wool is supported. These comments on the proposed determinations were not adopted. It has been determined that mohair should be supported at a level of 85 percent of the percent of parity at which shorn wool is supported. No additional incentives for the production of mohair are necessary. Even with mohair supported at 85 percent of the percent of parity at which wool is supported, the 1987 mohair support price would be the second highest since the program began. In addition, current estimates indicated that at this minimum level of support, producers would receive nearly 40 percent of their income from mohair in the form of Government payments. To support mohair at a higher level would be inconsistant with recent Government efforts to increase reliance by all agricultural sectors on the free market.

After taking the foregoing comments into consideration, and in order to implement the statutory requirement that the Secretary shall support the prices of wool and mohair for the 1986 through 1990 marketing years, the following determinations have been made with respect to the wool and mohair price support programs for the 1987 marketing year which affirm 1987 support prices of $1.81 per pound for wool and $4.95 per pound for mohair as announced by the Secretary of Agriculture in a press release issued on March 6, 1987. The pulled wool support rate will continue to be calculated as it has been in previous years.

Final Determinations

A. Support Price—Shorn Wool

The support price for shorn wool for the 1987 marketing year calculated in accordance with the formula contained in section 703 of the National Wool Act (Wool Act) is $1.81 per pound, grease basis. The calculation is as follows:

The average parity index for the 3-year period 1983–1985 is 1,118.7. The average parity index for the 3-year base period of 1958–1960 is 297.3. The ratio of these indices is 3.7629. The result of multiplying 3.7629 by the 1965 support price of $0.62 per pound is $2.3330. Applying the formula indicated in section 703(b) of the Wool Act, 77.5 percent of $2.3330 is $1.81, when rounded to the nearest full cent.

B. Support Price—Pulled Wool

The support price for pulled wool for the 1987 marketing year cannot be determined until the 1987 average market price for shorn wool is determined, which should occur by April

1988. The method for calculating the support price for pulled wool shall be as follows:

Once the 1987 average market price for shorn wool is determined, the support price for pulled wool will be determined by subtracting the 1987 average market price for shorn wool from the 1987 support price of shorn wool and multiplying that number by 5 pounds (the amount of wool pulled from the pelt of an average 100-pound unshorn lamb). The result is then multiplied by 80 percent, a quality adjustment factor which recognizes that unshorn lamb pelts contain a shorter staple and a lower quality wool than wool shorn from other sheep.

C. Support Price—Mohair

The support price for mohair for the 1987 marketing year shall be 85 percent of the percentage of parity at which shorn wool is supported, or $4.95 per pound. The calculation is as follows:

The October 1986 parity prices for shorn wool and for mohair are $2.43 and $7.82 per pound, respectively. The support price for shorn wool for the 1987 marketing year as calculated in accordance with the formula set forth in section 703(b) of the Wool Act is $1.81 per pound or 74.5 percent of the October 1986 parity price for shorn wool. The price support level for mohair for the 1987 marketing year is equal to 85 percent of 74.5 percent (the percentage of the parity price at which shorn wool is supported), which is equal to 63.3 percent. Accordingly, 63.3 percent of the October 1986 parity price for mohair of $7.82 per pound results in a support price for mohair for the 1987 marketing year of $4.95 per pound.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); secs. 702–708, 68 Stat. 910–912, as amended (7 U.S.C. 1781–1787).

Signed at Washington, DC, on June 30, 1987.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87–15479 Filed 7–7–87; 8:45 am]

BILLING CODE 3410-05-M

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board

Date: August 12–14, 1987

Time: 8:00 a.m.–5:30 p.m., August 12–13, 1987; 8:00 a.m.–12:00 Noon, August 14, 1987

Place: North Carolina State University, Raleigh, North Carolina

Type of Meeting: Open to the Public. Persons may participate in the meeting and site visits as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will be reviewing collaborative scientific research, development, and information management conducted at NCSU School of Agriculture and Life Sciences.

Contact Person For Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 316–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250; telephone (202) 447–3684.

Done in Washington, DC, this 26th day of June 1987.

John Patrick Jordan,

Administrator.

[FR Doc. 87–15478 Filed 7–7–87; 8:45 am]

BILLING CODE 3410-MT-M

Forest Service

Columbia River Gorge National Scenic Area Interim Guidelines; Availability

The Columbia River Gorge National Scenic Area Act of November 17, 1986, requires that the Secretary of Agriculture develop Interim Guidelines for the Scenic Area outside of Urban Areas. The purpose of the Guidelines is to identify land use activities which are inconsistent with the Act and govern the authority to acquire land without consent of the owner. The Interim Guidelines establish the standards by which proposed developments and changes in land use will be evaluated for consistency with the Scenic Area Act.

A Notice of Availability for draft Interim Guidelines was published in the **Federal Register** on April 21, 1987. Following a 30-day comment period, the Interim Guidelines were revised to respond to comments.

Final Interim Guidelines have been prepared and are now available from the National Scenic Area, 902 Wasco Avenue, Suite 301, Hood River, OR 97031. For further information, contact Katherine Jesch, Scenic Area Planner, (503) 386–2333.

Arthur W. DuFault,

National Scenic Area Manager.

[FR Doc. 87–15475 Filed 7–7–87; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Environmental Statements, Availability; South Delta Watershed, Mississippi

AGENCY: Soil Conservation Service.

ACTION: Notice of Availability of a Record of Decision.

SUMMARY: L. Pete Heard, responsibile Federal official for projects administered under the provisions of Pub. L. 83–566, 16 U.S.C. 1001–1008, in the State of Mississippi, is hereby providing notification that a record of decision to proceed with the installation of the South Delta Watershed project is available. Sincle copies of this record of decision may be obtained from L. Pete Heard at the address shown below.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, Suite 1321, Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone (601) 965–5205.

(This activity is listed in the Catolog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: June 29, 1987.

L. Pete Heard,

State Conservationist.

[FR Doc. 87–15476 Filed 4–7–87; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting; Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m. on July 27, 1987, at the Executive Tower Inn, 1402 Curtis Street, Denver, Colorado 80202. The purpose of the meeting is to plan the release of the Committee's Hispanic dropout study and activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz, or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact

the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 2, 1987

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-15445 Filed 7-7-87; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting; District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn at 4:30 p.m. on July 14, 1987, at the Dupont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC. The purpose of the meeting is to collect information on and discuss the reporting of handicap discrimination under District of Columbia law against individuals with Acquired Immune Deficiency Syndrome (AIDS) in Washington, DC and plan activities for FY 87-88.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Walter E. Washington or John I. Binkley, Director of the Eastern Regional Division at 202/523-5264 (TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 22, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-15446 Filed 7-7-87; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.
Title: Copper Controlled Materials.
Form Number: Agency—ITA-9008; OMB—0625-0011.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 100 respondents; 200 reporting hours.
Needs and Uses: The information is required in support of the President's priorities and allocations authority under the Defense Production Act of 1950. The information requested provides data on defense rated shipments of copper and copper base alloy products. The data is used by the International Trade Administration to establish and monitor the obligation ("set-asides") of products of copper and copper base alloy products to accept defense rated orders.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: Quarterly.
Respondent's Obligation: Mandatory.
OMB Desk Officer: John Griffen, 395-7340.

Agency: International Trade Administration.
Title: Controlled Materials Requirements (Production, Construction, or Research and Development).
Form Number: Agency—ITA-9048; OMB—0625-0013.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 2,900 respondents; 1,250 reporting hours.
Needs and Uses: The information is required in support of the President's priorities and allocations authority under the Defense Production Act of 1950, as implemented by the Defense Priorities and Allocations System Regulation. The survey provides data on the quarterly requirements of controlled materials (copper, steel, aluminum, and nickel alloys) needed in support of authorized defense or energy programs. The information is used by several agencies to make program determinations.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: John Griffen, 395-7340.

Agency: International Trade Administration.
Title: Aluminum Producers and Importers (Receipts, Shipments, and Stocks).
Form Number: Agency—ITA-978; OMB—0625-0016.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 300 respondents; 1,800 reporting hours.
Needs and Uses: This information collection from aluminum ingot and mill product producers is required in support of the President's priorities and allocations authority under the Defense Production Act of 1950. This survey provides data on defense rated shipments of aluminum ingot and mill products. The data is used by the International Trade Administration to establish and monitor the obligation ("set-asides") of producers of aluminum ingot and mill products to accept defense rated orders.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: Monthly.
Respondent's Obligation: Mandatory.
OMB Desk Officer: John Griffen, 395-7340.

Agency: International Trade Administration.
Title: Steel Controlled Materials Report.
Form Number: Agency—ITA—943; OMB—0625—0017.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 100 respondents; 133 reporting hours.
Needs and Uses: This information is required in support of the President's priorities and allocations authority under the Defense Production Act of 1950, as amended, as implemented by the Defense Priorities and Allocations System Regulation. The information provides data on defense rated shipments of iron and steel. The data is used to establish and monitor the obligation ("set-asides") of producers of iron and steel to accept defense rated orders.
Accepted Public: Businesses or other for-profit institutions.
Frequency: Quarterly.
Respondent's Obligation: Mandatory.
OMB Desk Officer: John Griffen, 395-7340.

Agency: International Trade Administration.
Title: Shipment of Nickel Alloy Products.
Form Number: Agency, ITA-942; OMB-0625-0021.

Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 21 respondents; 14 reporting hours.
Needs and Uses: The information collected from nickel alloy products producers is required for the enforcement and administration of the delegated authority of the Defense Production Act of 1950, as amended, to manage the consumption and use of controlled materials. The survey provides data on defense rated shipments of nickel alloy products. It is used to monitor the "set-asides" of producers of nickel alloys to accept defense rated orders.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: Quarterly.
Respondent's Obligation: Mandatory.
OMB Desk Officer: John Griffen, 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: June 30, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–15435 Filed 7–7–87; 8:45 am]

BILLING CODE 3510-CW-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.
Title: Shipments of Primary Nickel.
Form Number: Agency—ITA–920; OMB—0625–0012.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 21 respondents; 14 reporting hours.
Needs and Uses: The information is required in support of the President's industrial mobilization responsibilities under the Defense Production Act of 1950, as amended . The survey vey provides data on shipments of primary nickel and is used to determine stockpile goals and establish acquisition and disposal programs.
Affected Public: Businesses or other for-profit institutions.
Frequency: Quarterly.
Respondent's Obligation: Mandatory.
OMB Desk Officer: John Griffen, 395–7340.

Agency: International Trade Administration.
Title: Request for Special Priorities Assistance.
Form Number: Agency—ITA–999; OMB—0625–0015.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 1,800 respondents; 900 reporting hours.
Needs and uses: This information is required in support of the President's priorities and allocations authority under the Defense Production Act, as amended. Defense contractors may request special priorities assistance when placing defense rated orders with suppliers in support of authorized national defense and energy programs. This form is used by contractors to apply for such assistance.
Affected Public: Businesses or other for-profit institutions; federal agencies or employees; small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: John Griffen, 395–7340.

Agency: International Trade Administration.
Title: Titanium Metal.
Form Number: Agency—ITA–991; OMB—0625–0019.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 35 respondents; 140 reporting hours.
Needs and uses: This information is required in support of the President's industrial mobilization responsibilities under the Defense Production Act of 19. Titanium is a strategic and critical material essential to defense production. The information collected provides data on the supply, production and shipments of titanium sponge, ingot, and mill shapes, the consumption of scrap, and the imports of titanium sponge. The data are used by several Federal agencies in support of their programs.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: Quarterly.
Respondent's Obligation: Mandatory.
OMB Desk Officer: John Griffen, 395–7340.

Agency: International Trade Administration.
Title: Jewel Bearings and Related Components.
Form Number: Agency—ITA–941; OMB—0625–0025.
Type of Request: Revision of a currently a approved collection.
Burden: 240 respondents; 240 reporting hours.
Needs and uses: This information collected from consumers of jewel bearings and related components is required in support of mobilization preparedness responsibilities assigned to the Department of Commerce. The information provides data on production, imports and consumption of jewel bearings and related components and is used by several federal agencies in support of their programs.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: Triannually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: John Griffen, 395–7340.

Agency: International Trade Administration.
Title: Emergency Application for Rating or Directive Assistance.
Form Number: Agency—ITA–993; OMB—0625–0032.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 0 respondents at this time; 1 reporting hour.
Needs and Uses: Standby emergency assistance has been a part of the Government's emergency preparedness planning since the mid-1950's. In the event of a national emergency, this information would be used to assure that production materials for essential items may be obtained by contractors, and the distribution of these items may be accomplished. Contractors would use this form to request special priority rating authority or directive assistance during a national emergency.
Affected Public: Businesses or other for-profit institutions; federal agencies or employees; small businesses or organizations.
Frequency: On occasion.

Respondent's Obligation: Mandatory.
OMB Desk Officer: John Griffen, 395–7340.
Agency: International Trade Administration.
Title: Diamond Dies, Natural and Synthetic Production, Imports and Exports.
Form Number: Agency—ITA–9015; OMB—0625–0033.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 22 respondents; 11 reporting hours.
Needs and Uses: This information is required in support of the President's industrial mobilization responsibilities under Title III of the Defense production Act of 1950, as amended. The survey provides data on production, imports and exports of diamond dies, natural and synthetic. The information collected is used by the Federal Emergency Management Agency and the Department of Commerce in support of their functions.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: Annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: John Griffen, 395–7340.

Agency: International Trade Administration.
Title: Radial Ball Bearings (30 mm and Under).
Form Number: Agency—ITA–985; OMB—0625–0044.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 15 respondents; 8 reporting hours.
Needs and Uses: The information collected from radial ball bearing producers (30 mm and under) is required in support of mobilization preparedness responsibilities assigned to the Commerce Department under the Defense Production Act of 1950. This survey provides data on the shipments, including defense orders and exports and unfilled orders of radial ball bearings. Miniature and instrument radial ball bearings are used in many defense critical products. The industry needs to be monitored in view of the deterioration of the domestic radial ball bearing industry.
Affected Public: Businesses or other for-profit institutions.
Frequency: Annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: John Griffen, 395–7340.

Agency: International Trade Administration.
Title: Defense Priorities and Allocations Systems (DPAS).
Form Number: Agency—N/A; OMB—0625–0107.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 25,000 recordkeepers; 16,667 recordkeeping hours.
Needs and Uses: Under the Defense Production Act (DPA) of 1950, as amended, the President is given authority to allocate materials and facilities and to establish priorities in the performance of contracts and orders in support of national defense. Any person who receives a rated order under the implementing DPAS regulation must retain a record of the transaction. The records are used in audits/investigations to determine if requirements of the DPA and implementing regulation have been properly followed.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: Recordkeeping.
Respondent's Obligation: Mandatory.
OMB Desk Officer: John Griffen, 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: July 1, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–15436 Filed 7–7–87; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration, Commerce.

[Application No. 86–00011]

Export Trade Certificate of Review

AGENCY: Department of Commerce, ITA.

ACTION: Notice of issuance of an export trade certificate of review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Millers' National Federation (MNF). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

U.S. origin wheat flour, durum semolina, semolina-farina, and other products or byproducts of the milling of U.S. wheat and/or durum.

Export Trade Facilitation Services (as they relate to the export of Products)

International market research, product identification, foreign buyer import tender standardization, and determination of the price which will be paid by the overseas buyer under the Export Enhancement Program.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members (in addition to applicant)

Roy M. Henwood, President of MNF; Paul B. Green, Consultant to MNF; and members of the Foreign Agricultural Policy Committee of MNF to the extent that they represent MNF as members of the committee (Cereal Food Processors, Inc.; ADM Milling Company; Bartlett

Milling Company; ConAgra/Peavey; International Multifoods Corporation; The Pillsbury Company; and Cargill, Inc.).

Export Trade Activities and Methods of Operation

In connection with the Export Enhancement Program, and with the export of Products and the provision of Export Trade Facilitation Services to Federation members, MNF and its Members may:

1. Enter into discussions and negotiations with foreign buyers eligible under the Export Enhancement Program and agree among themselves and with foreign buyers concerning:

a. Standardized production specifications, quantities, timing, shipping, packing, credit, and banking terms necessary to meet the needs of the foreign buyer;

b. Standardized tender terms of a world or U.S.-origin tender for Products in Export Trade in order to allow U.S. flour millers to compete effectively for participation; and

c. Negotiation of the highest possible price to be paid by the foreign buyer.

2. Diseminate information to USDA and among the Members about foreign origin competitors' price levels, foreign subsidy levels, foreign competitors' credit programs, product specifications and travel plans for the purpose of establishing the competitive world transaction price level for a specific commodity and destination. Such information will be gathered from Federation members and discussed in the course of foreign buyer negotiations by the Members representing MNF; and

3. Carry out foreign market development trips to define additional Export Markets which may fit the criteria for the Export Enhancement Program and make export and foreign competitor information gathered on those trips available to USDA and to Federation members.

4. At any meeting between two or more members of the Foreign Agricultural Policy Committee of MNF in which the activities described in Paragraphs 1 or 2 above are engaged in, the following procedures shall be followed:

a. MNF will designate an individual other than an officer, director or employee of a member of the Foreign Agricultural Policy Committee of MNF as its representative;

b. Such representative will maintain and sign an accurate and complete record of all matters discussed at the meeting; and

c. MNF will retain the records for 2 years from the date of the meeting and make them available to the Department of Commerce upon its request on its own behalf or on behalf of the Department of Justice.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 30, 1987.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87-15433 Filed 7-7-87; 8:45 am]

BILLING CODE 3510-DR-M

[Application No. 86-00011]

Export Trade Certificate of Review

AGENCY: Department of Commerce, ITA.

ACTION: Notice of issuance of an export trade certificate of review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Millers' National Federation (MNF). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

U.S. origin wheat flour, durum semolina, semolina-farina, and other products or byproducts of the milling of U.S. wheat and/or durum.

Export Trade Facilitation Services (as they relate to the export of Products)

International market research, product identification, foreign buyer import tender standardization, and determination of the price which will be paid by the overseas buyer under the Export Enhancement Program.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members (in addition to applicant)

Roy M. Henwood, President of MNF; Paul B. Green, Consultant to MNF; and members of the Foreign Agricultural Policy Committee of MNF to the extent that they represent MNF as members of the committee (Cereal Food Processors, Inc.; ADM Milling Company; Bartlett Milling Company; ConAgra/Peavey; International Multifoods Corporation; The Pillsbury Company; and Cargill, Inc.).

Export Trade Activities and Methods of Operation

In connection with the Export Enhancement Program, and with the export of Products and the provision of Export Trade Facilitation Services to Federation members, MNF and its Members may:

1. Enter into discussions and negotiations with foreign buyers eligible under the Export Enhancement Program and agree among themselves and with foreign buyers concerning:

a. Standardized production specifications, quantities, timing, shipping, packing, credit, and banking terms necessary to meet the needs of the foreign buyer;

b. Standardized tender terms of a world or U.S.-origin tender for Products in Export Trade in order to allow U.S. flour millers to compare effectively for participation; and

c. Negotiation of the highest possible price to be paid by the foreign buyer.

2. Disseminate information to USDA and among the Members about foreign origin competitors' price levels, foreign subsidy levels, foreign competitors' credit programs, product specifications and travel plans for the purpose of establishing the competitive world

transaction price level for a specific commodity and destination. Such information will be gathered from Federation members and discussed in the course of foreign buyer negotiations by the Members representing MNF; and

3. Carry out foreign market development trips to define additional Export Markets which may fit the criteria for the Export Enhancement Program and make export and foreign competitor information gathered on those trips available to USDA and to Federation members.

4. At any meeting between two or more members of the Foreign Agricultural Policy Committee of MNF in which the activities described in Paragraphs 1 or 2 above are engaged in, the following procedures shall be followed:

a. MNF will designate an individual other than an officer, director or employee of a member of the Foreign Agricultural Policy Committee of MNF as its representative;

b. Such representative will maintain and sign an accurate and complete record of all matters discussed at the meeting; and

c. MNF will retain the records for 2 years from the date of the meeting and make them available to the Department of Commerce upon its request on its own behalf or on behalf of the Department of Justice.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 30, 1987.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87-15434 Filed 7-7-87; 8:45 am]

BILLING CODE 3510-DR-M

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration will be held August 5, 1987, 9 a.m. to 3 p.m., U.S. Department of Commerce, Herbert Hoover Building, Room 4830, 14th and Constitution Avenue, NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

General Session

9:00 a.m.-11:45 a.m. Status reports by Ad Hoc Working Group Chairmen, and an update on Export Control initiatives.

Executive Session

1:30-3:00 p.m. Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Act of 1979, as amended. A Notice of Determination to close meetings, or portions of meetings, of the subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 17, 1985, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

For further information, contact, Constance L. White, Office of the Deputy Assistant Secretary for Export Administration at (202) 377-8760.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

July 2, 1987

[FR Doc. 87-15454 Filed 7-7-87; 8:45 am]

BILLING CODE 3510-DT-M

CONSUMER PRODUCT SAFETY COMMISSION

Interagency Committee on Cigarette and Little Cigar Fire Safety; Technical Study Group Meeting

AGENCY: Interagency Committee on Cigarette and Little Cigar Fire Safety.

ACTION: Notice of meeting.

SUMMARY: The Technical Study Group on Cigarette and Little Cigar Fire Safety will meet on July 16 and 17, 1987, in Washington, DC to review the status of major projects undertaken to implement the Cigarette Safety Act of 1984. A portion of the meeting will be closed to the public to allow discussion of information which is designated trade secret or confidential.

DATE: The meeting will be on July 16 and 17, 1987, from 9:30 a.m. to 5:00 p.m. each day.

ADDRESS: The meeting will be in Room 703-A of the Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Buggs, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION: The Cigarette Safety Act of 1984 (Pub. L. 98-567, 98 Stat. 2925, October 30, 1984) created the Technical Study Group on Cigarette and Little Cigar Fire Safety to prepare a final technical report to Congress concerning the technical and commercial feasibility of developing cigarettes and little cigars with minimum propensity to ignite upholstered furniture and mattresses.

The Technical Study Group will meet on July 16 and 17, 1987, to review all technical reports prepared to implement the Cigarette Safety Act of 1984.

The Chairman of the Interagency Committee on Cigarette and Little Cigar Fire Safety, the agency to which the Technical Study Group reports, has given written authorization for a portion of this meeting to be closed in order to allow consideration of information furnished to the Technical Study Group which has been designated trade secret or confidential. The authorization to close a portion of the meeting is given in accordance with provisions of section 10 of the Federal Advisory Committee Act (5 U.S.C. App. 2), section 6 of the Cigarette Safety Act of 1984 (Pub. L. 98-587); 98 Stat. 2925), and 5 U.S.C. 552b(c)(3) and (4).

The rest of the meeting will be open to observation by members of the public, but only members of the Technical Study Group may participae in the discussion.

Dated: July 2, 1987.

Colin B. Church,

Federal Employee Designated by the Interagency Committee on Cigarette and Little Cigar Fire Safety.

[FR Doc. 87-15462 Filed 7-7-87; 8:45 am]

BILLING CODE 6355-0-M

DEPARTMENT OF DEFENSE

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panal Advisory Committee Pacific Basin Task Force will meet July 20, 1987 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria,

Virginia. All sessions will be closed to the public.

The purpose of this meeting is to examine the broad policy issues related to maritime aspects in the Pacific. The entire agenda for the meeting will consist of discussions of key issues related to United States national security interests and naval strategies in the Pacific and related intelligence. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panal Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: July 2, 1987.

Jane M. Virga,

LT, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 87-15430 Filed 7-7-87; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Industrial Base and National Security Task Force will meet August 4-5, 1987 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's policies in several board areas, including mobilization readiness, production surge capacities, weapons system acquisition strategies, potential resource vulnerabilities, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 553(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: July 2, 1987.

Jane M. Virga,

LT, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 87-15431 Filed 7-7-87; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Notice was published June 18, 1987, at 52 FR 23199 that the Naval Research Advisory Committee Panel on Laser Eye Protection will meet on June 30, 1987. The meeting location has been changed. All sessions of the meeting will be held at the Science Applications International Corporation, 1710 Goodridge Drive, McLean, Virginia. All other information in the previous notice remains effective. In accordance with 5 U.S.C. section 552(b)(2), the place of meeting change is publicly announced at the earliest practical time.

Jane M. Virga,

Lieutenant, JAGC, U.S. Navy Reserve, Federal Register Liaison Officer.

July 1, 1987.

[FR Doc. 87-15432 Filed 7-7-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84-055E]

Application Notice for New Awards Under the Supplemental Funds Program for Cooperative Education Support for the Academic Year 1987-1988

Purpose: Provides funds to institutions of higher education, on a formula basis, to initiate a program of cooperative education or to improve or expand an existing cooperative education program. Awards are made using College Work-Study Program funds that are available for reallotment as supplemental funds.

Deadline for Transmittal of Applications: August 17, 1987.

Applications Available: July 14, 1987.

Available Funds: The amount of College Work-Study funds available for reallotment as supplemental funds for expenditure for this program will not be known until after the deadline date for filing applications.

Estimated Range of Awards: $500 to $160,000.

Estimated Average Size of Awards: $6,000.

Estimated Number of Awards: 550.

Project Period: 12 months.

Applicable Regulations: (a) The Supplemental Funds Program for Cooperative Education Regulations 34 CFR Part 636. A notice of Proposed Rulemaking (NPRM) for the Cooperative Education Program was published in the **Federal Register** on June 16, 1987 (52 FR 22948). This NPRM does not apply to this competition for the Supplemental Funds Program for Cooperative Education. (b) The Education Department General Administrative Regulations 34 CFR Parts 74, 75, 77, and 78.

For Applications or Information Contact: Stanley B. Patterson or Darlene B. Collins U.S. Department of Education, 400 Maryland Avenue, SW., Room 3022, ROB-3, Mail Stop 3327, Washington, DC 20202. Telephone: (202) 732-4393 or 732-4404.

Program Authority: 42 U.S.C. 2752(d).

Dated: June 30, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87-15460 Filed 7-7-87; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Strengthening Institutions Program; Strengthening Historically Black Colleges and Universities (HBCU) Program, Strengthening Historically Black Graduate Institutions (HBGI) Program, and Endowment Challenge Grant Program

AGENCY: Department of Education.

ACTION: Notice of Dates and Location for Application Preparation Workshops for New Development Grants and Endowment Challenge Grants.

SUMMARY: The Assistant Secretary for Postsecondary Education will conduct Application Preparation Workshops to assist prospective applicants to develop applications for grants under the Strengthening Institutions, Strengthening HBCU, Strengthening Historically Black Graduate Institutions, and Endowment Challenge Grant Programs. The announced deadline date for receipt of eligibility applications for the Strengthening Institutions and Endowment Challenge Grant Programs is July 31, 1987. The deadline for receipt

of Strengthening Institutions Program grant applications is August 7, 1987. The deadline date for receipt of Strengthening HBCU and Strengthening Historically Black Graduate Institutions Programs applications is August 4, 1987.

DATES: Workshops are scheduled to be held on July 21, 22, and 23.

ADDRESS: The location and time for the workshops are as follows:

July 21, 1987, 9:00 a.m.–4:30 p.m.—Strengthening HBCU, Historically Black Graduate Institutions, and Endowment Challenge Grant Programs, Washington, D.C. General Services Administration Building, First Floor Auditorium, Seventh and D Streets, SW.

Contact Persons: Dr. Elwood Bland—HBCU/HBGI Programs, (202) 732–3326, Ms. Anne Price-Collins—Endowment Program, (202) 732–3337

July 22, 1987, 8:00 a.m.–4:30 p.m.—Strengthening Institutions and Endowment Challenge Grant Programs, Washington, D.C. General Services Administration Building, First Floor Auditorium, Seventh and D Streets, SW.

Contact Persons: Dr. Louis J. Venuto—Strengthening Institutions Program, (202) 732–3314; Ms. Anne Price-Collins—Endowment Program, (202) 732–3335

July 23, 1987, 9:00 a.m.–12 noon—Follow-up sessions for the Strengthening Institutions Program. Location to be announced during the July 22 workshop.

(Catalog of Federal Domestic Assistance No. 84.031A Strengthening Institutions Program; No. 84.031B Strengthening Historically Black Colleges and Universities Program and Strengthening Historically Black Graduate Institutions Program; No. 84.031G Endowment Challenge Grant Program)

Dated: July 1, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–15461 Filed 7–7–87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RE80-2-002]

Application for Exemption; Cliffs Electric Service Co.

July 2, 1987.

Take notice that Cliffs Electric Service Company (Cliffs Electric) filed an application on December 30, 1986 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44FR58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1988 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

In its application for exemption Cliffs Electric states, in part, that it should not be required to file the specified data for the following reasons:

Cliffs Electric is a wholly-owned subsidiary of the Cleveland-Cliffs Iron Company (Cleveland Cliffs), an iron ore mine operator and owner. Cliffs Electric, with rare exception, sells it entire electrical output to its parent company, Cleveland Cliffs.

In that Cliffs Electric's sole customer is Cleveland-Cliffs, its parent company, Cliffs Electric was granted an exemption from the 1980, 1982, 1984, and 1986 Section 133 filings. Cliffs Electric states that its retail service remains substantially the same and is not expected to change, the condition upon which the previous exemptions were predicated.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on to:

Mr. M.E. Jackson, Assistant Secretary, Cleveland-Cliffs Inc., Huntington Building, 14th Floor, 925 Euclid Avenue, Cleveland, OH 44115

Mr. William J. Madden, Jr., Bishop, Liberman, Cook, Purcell & Reynolds, 1200 17th Street, NW., Washington, DC 20036

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–15508 Filed 7–7–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-395-000]

Application; Consumers Power Co.

June 30, 1987.

Take notice that on June 16, 1987, Consumers Power Company (Consumers), 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP87–395–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and storage of natural gas; for permission and approval to abandon the services upon termination of the contracts; and for a determination and order declaring that Consumer's status as a local distribution company would not be changed as a result of the proposed transportation and storage services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Consumers states that it has entered into Gas Storage Agreements (Agreements) with Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline). Consumers further states, that service under the Agreements would continue for a primary term ending April 30, 1990 and year-to-year thereafter until terminated. Consumers states that deliveries and redeliveries may be scheduled at any time during the term of the Agreements and Consumers would receive or redeliver the gas so not to interfere with its existing system operations. Consumers further asserts that it would be under no obligation to reserve any storage capacity or to hold more than 15 Bcf of gas at any point in time for the account of Panhandle or 3 Bcf for Trunkline. Consumer further states that gas going to and from storage would be deemed to be transferred, at (1) existing interconnections between the facilities of Consumers and Trunkline located in St. Joseph County, Michigan, (2) any existing points of connection between Consumers and Michigan Gas Storage Company (Storage Company), and (3) other points as may be agreed upon by the parties. Consumers continues, stating that along with Storage Company's assistance, it would transport the gas to and from the point of transfer and its various gas storage fields in Michigan. Consumers states that Panhandle and Trunkline would pay an injection charge of 10 cents/ MMBtu and a storage service charge of 4 cents/ MMBtu stored. Consumers explains that a storage charge of 4 cents/ MMBtu would be applied to all quantities that remain in

storage on the first day of April each year. Consumers further explains that Panhandle and Trunkline would also pay Consumers a 11.49 cents/ MMBtu transportation charge for all gas delivered to storage. In addition, Consumers asserts that storage fuel gas equal to two percent of the gas delivered by Consumers to its storage resources would be retained by Consumers as storage compressor fuel.

Consumers requests:

(1) A certificate of public convenience and necessity authorizing the transportation and storage of natural gas for Trunkline and Panhandle;

(2) Pregranted abandonment authority upon termination of the contracts; and

(3) A declaration that Consumers provision of these transportation and storage services would not prejudice or adversely affect its rights and status as a local distribution company exempt from the jurisdiction of this Commission and would be without prejudice to Consumers rights under the section 1(c) of the Natural Gas Act, or its rights to exemption from the jurisdiction of this Commission under the Natural Gas Policy Act.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 21, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Consumers to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-15509 Filed 7-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-386-000]

Application; Florida Gas Transmission Co.

July 2, 1987.

Take notice that on June 5, 1987, Florida Gas Transmission Company (FGT), P. O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP87-386-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing FGT to transport gas on an interruptible basis for Winnie Pipeline Company (WPC), and to construct and operate facilities associated with the proposed transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

FGT proposes to transport up to 10 billion Btu equivalent of natural gas per day for WPC for an initial term of 5 years from the date of first deliveries, and from year to year thereafter. FGT states that the gas will be delivered to FGT for transportation at an existing point of intereconnection between FGT and WPC in Brazoria County, Texas. FGT is proposing to redeliver the gas to WPC at an existing point of interconnection between FGT and WPC in Chambers County, Texas.

FGT also proposes to construct and operate a 4-inch hot tap and other minor facilities in Jefferson County, Texas to serve as an additional point of interconnection for redelivery to WPC. FGT estimates that these facilities would cost $28,500, for which WPC would reimburse FGT.

FGT states that for the period commencing with initial deliveries and ending July 1, 1987, it proposes to charge a facility charge of 7.5 cents per million Btu delivered and a service charge calculated based on 4.0 cent per million Btu per 100 miles of forward haul. FGT states further that effective July 1, 1987, the facility charge would be reduced to 7.3 cents per million Btu delivered and the service charge would be calculated based on 3.9 cents per million Btu per 100 miles of forward haul, pursuant to FGT's Stipulation and Agreement approved in Docket No. RP86-137-000. FGT states that these charges are in addition to the appropriate Gas Research Institute surcharge.

FGT states that the proposed transportation service would be contingent upon the availability of capacity sufficient to provide the service without detriment or disadvantage to FGT's existing customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 23, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for FGT to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-15510 Filed 7-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-193-004]

Change in Rates Pursuant to Purchased Gas Cost Adjustment; North Penn Gas Co.

July 2, 1987.

Take notice that North Penn Gas Company (North Penn) on June 26, 1987, tendered for filing Eighty-Fourth Revised Sheet No. PGA-1 to its FERC Gas Tariff, First Revised Volume No. 1. North Penn states that the purpose of this filing is to adjust North Penn's base tariff rate to reflect the effect of the Tax Reform Act of 1986 pursuant to the Stipulation and Agreement in settlement of Docket No. RP85-193. As provided for in such Stipulation and Agreement, North Penn has requested an effective date of July 1, 1987. North Penn further requests waiver of the 30-day notice period to allow the rates to become effective on July 1, 1987.

North Penn states that a copy of this filing has been mailed to each of North Penn's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-15511 Filed 7-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-404-000]

Application; Northern Natural Gas Co., Division of Enron Corp.

June 30, 1987.

Take notice that on June 22, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87-404-000, an application pursuant to section 7(c) of the Natural Gas Act, for a Certificate of Public Convenience and Necessity authorizing the transportation of natural gas by Northern for the account of Petrofina Gas Pipeline Company (Petrofina). Northern states that it shall provide interruptible transportation service, for Petrofina's account, for up to 30,000 MMBtu per day of natural gas attributable to Petrofina's purchases from High Island Block 571 in Offshore Texas.

Northern explains that Petrofina will cause the designated purchases to be delivered to them immediately upstream of the measurement facilities on the High Island Block 571 production platform. Northern continues that it will transport and redeliver thermally equivalent volumes at the existing interconnection of Northern's and High Island Offshore System's (HIOS) facilities in federal waters in High Island Block 546.

Northern states that for the interruptible service described herein, it proposes to initially charge Petrofina the effective transportation rate as set forth in Northern's Stipulation and Agreement of Settlement in Docket No. RP85-206-000 (S&A). Northern asserts that under the S&A, the maximum transportation rate for this service is 2.11 cents per MMBtu and that such initial rate will be subject to revision based on the cost of service factors ultimately approved by the Commission in Docket No. RP85-206-000.

Protests and motions to intervene may be filed with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with the Rules of Practice and Procedure (18 CFR 385.214 or 385.211) on or before July 21, 1987.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no protest or motion to intervene is filed within the time required herein and the Commission, on its own review of the matter, believes that a grant of the Certificate is required by the Public Convenience and Necessity. If a protest or motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, less otherwise advised, it will be unnecessary for Northern to appear or to be represented at the hearing.

Kenneth F. Plumb.

Secretary.

[FR Doc. 87-15512 Filed 7-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-34-002]

Compliance Filing; Northwest Alaskan Pipeline Co.

July 2, 1987.

Take notice that on June 26, 1987, Northwest Alaskan Pipeline Company (Northwest Alaskan) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Original Volume No. 2. Northwest Alaskan states that this filing is being made pursuant to Ordering Paragraph (B) of the Commission order issued June 16, 1987, in Docket No. RP87-34-000.

Northwest Alaskan states that it has served copies of this filing on each person designated on the official service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-15513 Filed 7-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-408-000]

Complaint; Owens-Corning Fiberglas Corp. v. Transcontinental Gas Pipe Line Corp.

July 1, 1987.

Take notice that on June 24, 1987, Owens-Corning Fiberglas Corporation (Owens-Corning), Fiberglas Tower (T-13), Toledo, Ohio 43659, filed a complaint and request for a summary disposition in Docket No. CP87-408-000 pursuant to Rule 217 of the Commission's Rules of Practice and Procedure (18 CFR 385.217), alleging that Transcontinental Gas Pipe Line Corporation (Transco) has unlawfully abandoned transportation service to Owens-Corning in violation of Order No. 319 and section 7 of the Natural Gas Act (NGA). In the alternative, Owens-Corning requests that the Commission

use its enforcement powers under section 20 of the NGA and, pursuant to section 1b. 7 of the Commission's regulations, seek an injunction against Transco's action in a District Court of applicable jurisdiction as well as institute administrative proceedings.

Owens-Corning states that it operates and maintains major industrial facilities in Fairburn, Georgia (Fairburn) and Aiken, South Carolina (Aiken) which receive natural gas service from Atlanta Gas Light Company (AGL) and South Carolina Pipeline Company (SCP), respectively. Owens-Corning further states that AGL and SCP are sales customers of Transco.

Owens-Corning declares that by agreements executed between Owens-Corning and Transco, dated July 15, 1985 (Aiken) and August 15, 1985 (Fairburn), these facilities have received natural transportation service pursuant to Order No. 319, *i.e.*, § 157.209(a) of the Regulations under the NGA (18 CFR 157.209(a)) and Transco's blanket certificate authority authorizing such service. *Transcontinental Gas Pipe Line Corporation*, docket No. CP82–426–000, 20 FERC ¶ 62,420 (1982). Owens-Corning states that the provisions of the Order No. 319 transportation agreements are identical and that both contracts have five-year terms and do not expire until July and August, 1990.

On June 17, 1987, Owens-Corning states that Transco filed with the Commission a letter dated June 16, 1987, which states that Transco has elected to "close" its open access transportation service as of June 19, 1987, in order to avoid becoming an open access transporter on a permanent basis. It further states that, "The effect of this decision is to limit self-implementing transportation on Transco's system to grandfathered arrangements in place prior to October 9, 1985, which have not expired by their original terms and which qualify for transportation pursuant to Transco's non-sales displacement transportation policy."

On June 19, 1987, Owens-Corning asserts that it was notified by telephone that its Order No. 319 authorized transportation to the Fairburn and Aiken plants has been "interrupted." Based on discussions with Transco representatives, Owens-Corning further asserts that it is its understanding that Transco is relying on Article I.3 of the service agreements with Owens-Corning as justification for "interrupting" service to Owens-Cornings plants. In relevant part, Article I.3 provides:

> Transportation service rendered hereunder shall be subject to curtailment or interruption when in Seller's sole judgment such curtailment or interruption is necessary due to operating conditions or insufficient pipeline capacity available on Seller's system, or is otherwise necessary to protect authorized sales, transportation or storage services to Seller's existing customers which are dependent upon Seller's general system supply and services.

It is Owens-Corning's further understanding that Transco may also be relying on its non-sales displacement policy as a basis to "interrupt" service.[1] Transco has indicated that it is in the process of developing affidavit procedures to be used in connection with its non-sales displacement policy. Transco has not indicated when or under what circumstances Order No. 319 transportation service may be resumed.

Owens-Corning asserts that Transco's use of Article I.3 to interrupt service to Owens-Corning is in reality an attempt to abandon service in plain violation of its blanket certificate and section 7 of the NGA. Furthermore, to the extent that Transco attempts to resurrect its non-sales displacement policy, that policy has already been found to be unduly discriminatory and anticompetitive. *Transcontinental Gas Pipe Line Corporation*, 33 FERC ¶63,035 at 65,131 (1985); *Maryland People's Counsel v. FERC* 761 F.2d 780 (D.C. Cir. 1985); *Maryland People's Counsel v. FERC* 761 F.2d 768 (D.C. Cir. 1985) *Associated Gas Distributors v. FERC* No. 85–1811 (D.C. Cir. June 23, 1987).

In summary, Owens-Corning states that it is its position that Transco has breached its service agreements with Ownes-Corning and, as a consequence, has unlawfully abandoned service to Owens-Corning in violation of its blanked certificate.

Furthermore, Owens-Corning asserts that any attempt by Transco to resurrect its non-sales displacement policy should be summarily rejected as unlawful. First, Owens-Corning states that the Presiding Judge in *Transcontinental Gas Pipe Line Corporation*, 33 FERC §63,035 (1985) specifically found Transco's non-sales displacement policy unduly discriminatory and anticompetitive. *Id.* at 65,131–134. Secondly, Owens-Corning states that the very type of exclusionary restrictions contained in Transco's nonsales displacement policy are precisely the type found unduly discriminatory in *Maryland People's Counsel I and II. Maryland People's Counsel*, 761 F.2d 768 (D.C. Cir. 1985): *Maryland People's Counsel*, 761 F.2d 780 (D.C. Cir. 1985). And third, Owens-Corning asserts that the Commission has found that non sales displacement policies violate section 5 of the NGA.

Finally, Owens-Corning asserts that Transco's efforts to boost its own sales by shutting in grandfathered transactions is contrary to the policies which lie at the heart of Order Nos. 319 and 319–A.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 15, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Transco's answer shall also be due on or before July 15, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–15514 Filed 7–7–87; 8:45 am]

BILLING Code 6717–01–M

[1] Owens-Corning indicates that Transco has not explained the details of its current non-sales displacement policy. Owens-Corning further indicates that in the past, the policy has operated to bar transportation service to shippers who did not have access to another pipeline supplier or possess alternative fuel capability. In any event, Owens-Corning states that the effect is to insulate its sales service from the competitive forces of Order No. 319 transportation service.

[Docket No. RE81–74–005]

Application for Exemption; Sierra Pacific Power Co.

July 2, 1987.

Take notice that Sierra Pacific Power Company (SIERRA) filed an application on December 17, 1986 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on, or prior to June 20, 1988, and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

In its application for exemption SIERRA states, in part, that it should not be required to file the specified data for the following reasons:

FERC's reporting specifications pursuant to Part 290 produce data that are not used in Nevada or California rate proceedings.

The Regulatory Commissions of both the State of California and Nevada require retail rate case data filings that are more than adequate to fulfill the purposes of Section 133 of PURPA as set forth in Paragraph IV.

The information provided through the California Public Utilities Commission (CUPC) and the Public Service Commission of Nevada (PSCN) rate case filings and PSCN Resource Plan filing procedures of the Applicant provides more timely and relevant information for use in Sierra Pacific Power Company's rate cases, more accessible to interested parties in both California and Nevada, and the data is just as comprehensive as the data that is otherwise presently required to be filed under part 290. A total exemption from the FERC filing would in effect transform FERC's PURPA 133 filing, from an expensive and untimely collection of data to a less costly yet more timely and relevant package of information that would better serve the purpose of PURPA by the existing referenced filings before the CPUC and PSCN."

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on:

Mr. Gregory A. Vick, Vice President, Treasurer, Sierra Pacific Power Company, 6100 Neil Road, P.O. Box 10,100, Reno, Nevada 89520

Mr. John Madariaga, Vice President General Counsel, Sierra Pacific Power Company, 61 Neil Road, P.O. Box 10100, Reno, Nevada 89520

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-15515 Filed 7-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-393-000 and CP87-394-000]

Application; Southern Natural Gas Co.

July 2, 1987.

Take notice that on June 15, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket Nos. CP87-393-000 and CP87-394-000, applications pursuant to section 7(c) of the Natural Gas Act for limited term certificates of public convenience and necessity authorizing the transportation of natural gas for Atlanta Gas Light Company (Atlanta) agent for the William L. Bonnell Company, Inc. (Bonnell); and J.M. Huber Corporation (Huber), respectively, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

In Docket No. CP87-393-000, Southern proposes to transport up to 2,000 MMBtu of natural gas per day, on an interruptible basis, for Bonnell for a term expiring, October 31, 1988. Southern states that Bonnell would purchase the gas from Exxon Corporation U.S.A. Southern also indicates that it would receive the gas at various existing points on its system and would deliver to Atlanta at the Newnan-Yates-Dallas Area Delivery Point in Newnan, Georgia. Furthermore, Southern states that Atlanta, as agent, would effect delivery to Bonnell's plant located in the same general area.

In Docket No. CP87-394-000, Southern proposes to transport up to 1,600 MMBtu of natural gas per day on an interruptible basis, for Huber for a term expiring too, October 31, 1988. Southern also states that Huber would purchase its gas from SNG Trading, Inc., and Southland Pipeline Company. Southern also asserts that it would receive the gas at various existing points on its system and would deliver to Huber at the Huber No. 1 Meter Station and the Huber Suprex Meter Station. Southern concludes by stating that the gas received at these stations would service Huber's Langley plant and Graniteville plant, respectively, all located in Aiken County, South Carolina.

Southern further explains that a 3.25 percentage of the gas transported would be accountable for compressor fuel and company-use gas including system accounted-for gas losses; less shrinkage, fuel or loss from processing; and for loss or vented gas.

Southern proposes to charge Atlanta a transportation rate of 77.6 cents per MMBtu where the aggregate of the volumes transported under any and all transportation agreements with Southern when added to the volumes of gas delivered under Southern's Rate Schedule OCD, exceed the daily contract demand from Southern. For those volumes that do exceed Atlanta's daily contract demand, Southern proposes to charge 48.2 cents per MMBtu. Southern would charge Huber 77.6 cents per MMBtu of gas redelivered by Southern. In addition Southern proposes to collect the GRI surcharge of 1.35 cents per Mcf.

Southern alleges that the proposed transportation arrangements would enable Huber and Bonnell to diversify their natural gas supply sources and to obtain gas at competitive prices. In addition Southern would obtain take-or-pay relief on gas that Huber and Bonnell may obtain from their suppliers.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 23, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Southern to appear or be represented at the hearing.

Kenneth F Plumb,

Secretary.

[FR Doc. 87-15516 Filed 7-7-87 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-399-000]

Request Under Blanket Authorization; Southern Natural Gas Co.

July 2, 1987

Take notice that on June 17, 1987 Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-399-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain regulating facilities and to change the operation of an existing delivery point by increasing the contract delivery pressure under the blanket certificate issued in Docket No. CP82-406-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it is currently authorized to sell and deliver natural gas to Alabama Gas Corporation (Alagasco) as three Phenix City delivery points (Phenix City Nos. 1, 2, and 3) under the currently effective service agreement between Southern and Alagasco dated September 19, 1969. Southern further states that Alagasco, an existing customer of Southern, acquired the Phenix City Natural Gas System on November 6, 1986, and Southern has filed a revised Exhibit A to the currently effective service agreement between Southern and Alagasco to incorporate the Phenix City delivery points pursuant to § 157.218 of the Commission's Regulations.

Southern states that gas supplies are currently delivered to Phenix City No. 1 at a contract delivery pressure of 80 psig. Southern further states that Alagasco has requested, and Southern has agreed to deliver, main line pressure not to exceed the maximum allowable operating pressure of 175 psig. As a result of the increased delivery pressure, Southern further proposes to abandon two 4-inch regulators and auxiliary facilities which allow for delivery of the current contract pressure of 80 psig and will no longer be necessary for the operation of the subject delivery point upon delivery of main line pressure. Southern continues, stating, that said regulating facilities are in addition obsolete and that they are difficult and expensive to maintain.

Southern states that the proposed abandonment and increased delivery pressure will not result in any termination of service, and that said change will not result in a change to the contract demand of Alagasco at Phenix City No. 1. Further, Southern states that: (1) It has sufficient capacity to accomplish deliveries at the revised delivery pressure without detriment or disadvantage to its other customers; (2) deliveries at the increased delivery pressure will have no significant impact on Southern's peak day and annual deliveries; and (3) the abandonment and change are not prohibited by any existing tariff of Southern.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commissions Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-15517 Filed 7-7-87 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3228-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that EPA has forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The ICRs that follow are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Patricia Minami, (202) 382-2712 (FTS 382-2712) or Jackie Rivers, (202) 382-2740 (FTS 382-2740).

Office of Pesticides and Toxic Substances

Title: Polychlorinated Biphenyls (PCBs): Exclusions, Exemptions, and Use Authorizations ((EPA ICR #1001). (This is a renewal without change of a currently approved collection.)

Abstract: Manufacturers or importers of essential chemical products that inadvertently generate or contain PCBs as trace byproducts or impurities may avoid the TSCA 6(e) prohibition on PCB production if (1) the product or import falls within the definition of an "excluded manufacturing process, and (2) they certify, report and record the process through which they establish their exempt status. Through this procedure, EPA monitors PCB releases into the environment.

Respondents: Manufacturers and importers of certain products containing PCBs.

Frequency of Reporting: As necessary for firms to justify exclusion from statutory ban.

Estimated Annual Burden: 1,050 hours.

Title: Trade Secret Clearance Program (EPA ICR #0613). (This is a renewal without change of a currently approved collection.)

Abstract: To determine the public release status of registration test data, EPA asks pesticide registrants to make and substantiate confidentiality claims on those portions of the data for which they seek protected status. Data owners justify their claims by citing the appropriate release exemption from FIFRA section 10(d) or by furnishing other comparable proof.

Respondents: Certain pesticide registrants.

Frequency of Reporting: On occasion.

Estimated Annual Burden: 2,000 hours.

Agency PRA Clearance Requests Completed by OMB

EPA ICR #1355, Underground Storage Tanks—State Program Application, was approved 6/22/87 (OMB #2050-0067 expires 3/31/90).

EPA ICR #1360, Recordkeeping Requirements for Underground Storage Tanks Containing Regulated Substances, was approved 6/22/87 (OMB #2050-0068; expired 4/30/90).

Send comments on the above abstract(s) to:

Patricia Minami, PM-223, U.S. Environmental Protection Agency, Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Susan Dudley, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20503

Dated: July 1, 1987.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 87-15466 Filed 7-7-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3229-5]

Effects of Using Unleaded and Low-Lead Gasoline, and Non-Lead Additives on Agricultural Engines Designed for Leaded Gasoline; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of comment period.

SUMMARY: This notice announces a one-month extension of the comment period for the study performed by EPA and the U.S. Department of Agriculture (USDA) which examines the effects of unleaded and low-leaded gasoline, and non-lead additives, on agricultural engines designed to use leaded gasoline. *See* 52 FR 15376. The comment period will now close on August 10, 1987.

DATES: Pursuant to section 1765 of the Food Security Act of 1985, Pub. L. 99-198 (December 23, 1985), the EPA held three public hearings to provide an opportunity for oral presentations of data, views, and arguments concerning the study. The first hearing was held on Monday, June 1, 1987 in Washington, D.C., the second on Thursday, June 4, 1987 in Indianapolis, Indiana and the third was held on Tuesday, June 9, 1987 in Des Moines, Iowa. The comment period was originally set to close on July 10, 1987, and will now close on August 10, 1987.

ADDRESSES: Written comments should be submitted to: Central Docket Section (LE-131A), U.S. Environmental Protection Agency, Docket Number EN-87-03, Room 4, South Conference Center, telephone (202) 382-7548, 401 M Street, SW., Washington, DC 20460.

The docket may be inspected between 8 a.m. and 4 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

Copies of the study, and all materials relevant to it, are available from the Central Docket at the above address. Copies of the study are also available from Richard G. Kozlowski, Director, Field Operations and Support Division (EN-397F), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John A. Garbak, Environmental Engineer, Field Operations and Support Division (EN-397F) EPA, 401 M Street, SW., Washington, DC 20460. Telephone (202) 382-2635.

SUPPLEMENTARY INFORMATION: Under the terms of section 1765 of the Food Security Act of 1985 (Pub. L. 99-198), the EPA Administrator must provide a report to the President and the Congress with findings and recommendations on the need for lead additives in gasoline to be used on a farm for farming purposes. To aid the Administrator is making the appropriate findings and recommendations, the Agency requested public comments on the study on April 28, 1987. *See* 52 FR 15376.

In order to provide ample opportunity for all interested parties to comment on the report, the EPA is today extending the comment period from July 10, 1987 to August 10, 1987.

Dated: July 1, 1987.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 87-15468 Filed 7-7-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36144; FRL-3229-8]

Pesticide Registration Standard; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of draft Standard for comment.

SUMMARY: This notice announces the availability of a draft pesticide Registration Standard document for comment. The Agency has completed a review of the listed pesticide and is making available a document describing its regulatory conclusions and actions.

DATE: Written comments on the Registration Standard should be submitted on or before September 8, 1987.

ADDRESSES: Three copies of comments identified with the docket number listed with the Registration Standard should be submitted to:

By mail: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: To request a copy of a Registration Standard, contact Frances Mann of the Information Services Section, in Rm. 236 at the address given above (703-557-3262). Requests should be submitted no later than August 7, 1987, to allow sufficient time for receipt before the close of the comment period

For technical questions related to the Registration Standard, contact the Product Manager listed for that Standard, at the phone number given.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency conducts a systematic review of pesticides to determine whether they meet the criteria for continued registration under section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). That review culminates in the issuance of a Registration Standard, a document describing the Agency's regulatory conclusions and positions on the continued registrability of the pesticide. In accordance with 40 CFR 155.34(c), before issuing certain Registration Standards, the Agency makes the draft document available for public comment.

A draft Registration Standard for the following pesticide is now available:

Name of pesticide	Docket No.	Contact person
Bendiocarb	22781-23-3	Dennis Edwards, Product Manager 12, 703-557-2386.

Copies of the Registration Standard may be obtained from the Agency at the address listed under "**FOR FURTHER**

INFORMATION CONTACT." Because of the length of the Standard and the limited number of copies available for distribution, only one copy can be provided by mail to any one individual or organization. The Registration Standard is also available for inspection and copying in EPA Regional offices at the addresses listed below after August 7, 1987.

List of EPA Regional Offices

Pesticides and Toxic Substances Branch,
EPA—Region I,
JFK Federal Building,
Boston, MA 02203,
Contact person: Gerald Levy
Pesticides and Toxic Substances Branch,
EPA—Region II,
Woodbridge Avenue,
Edison, NJ 08837,
Contact person: Ernest Regna
Toxics and Pesticides Branch,
EPA—Region III,
6th and Walnut Sts.
Philadelphia, PA 19106,
Contact person: Larry Miller
Pesticides and Toxic Substances Branch,
EPA—Region IV,
345 Courtland, St., NE,
Atlanta, GA 30365,
Contact person: H. Kirk Lucius
Pesticides and Toxic Substances Branch,
EPA—Region V,
230 South Dearborn, St.,
Chicago, IL 60604,
Contact person: Phyllis Reed
Pesticides and Toxic Substances Branch,
EPA—Region VI,
1201 Elm St.,
Dallas, TX 75270,
Contact person: Norman Dyer
Pesticides and Toxic Substances Branch,
EPA—Region VII,
324 East 11th St.,
Kansas City, MO 64106,
Contact person: Leo Alderman
Toxic Substances Branch,
EPA—Region VIII,
1860 Lincoln, St., Suite 900,
Denver, CO 80295,
Contact person: C. Alvin York
Pesticides and Toxics Branch,
EPA—Region IX,
215 Fremont, St.,
San Francisco, CA 94105,
Contact person: Rich Baille
Pesticides and Toxic Substances Branch,
EPA—Region X,
1200 6th Ave.,
Seattle, WA 98101,
Contact person: Anita Frankel

Dated: June 26, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-15463 Filed 7-7-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-634]

Approval of Conversion Application; Baltimore Savings and Loan Association, F.A., Baltimore, MD

Dated: June 18, 1987.

Notice is hereby given that on June 15, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Baltimore Savings and Loan Association, F.A., Baltimore, Maryland for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30348.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-15440 Filed 7-7-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-635]

Approval of Conversion Application; Bethel Savings Bank, F.S.B., Bethel, ME

Dated: June 18, 1987.

Notice is hereby given that on June 15, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Bethel Savings Bank, F.S.B., Bethel, Maine for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Boston, One Financial Center, 20th Floor, Boston, Massachusetts 02111.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-15441 Filed 7-7-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement NO.: 202-010776-020
Title: Asia North America Eastbound Rate Agreement
Parties:
American President Lines, Ltd.
Barber Blue Sea
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. LInes, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line
Yamashita-Shinnihon Steamship Co., Ltd.
Zim Israel Navigation Co., Ltd.
Synopsis: The proposed amendment would clarify that the parties may elect to participate in a service contract, either totally or with limitations, by advising the agreement office either before or after the execution of the contract, and would correct a previous typographical error.

Dated: July 2, 1987.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-15437 Filed 7-7-87; 8:45 am]

BILLING CODE 6730-01-M

Collection of Data Under Section 18 of the Shipping Act of 1984—Assessment of the Impact of the Shipping Act of 1984 on the International Ocean Shipping Industry; Intent To Form an Advisory Committee

AGENCY: Federal Maritime Commission.

ACTION: Notice of Intent To Form an Advisory Committee.

SUMMARY: The Commission is considering the establishment of an Advisory Committee to make continuing recommendations on the conduct of a study to evaluate the impact of the Shipping Act of 1984. The Committee would be comprised of representatives of interests affected by the Shipping Act of 1984 including representatives of conferences, ocean common carriers, other common carriers, freight forwarders, shippers, shippers' associations, ports, non-port marine terminal operators, and other transportation service firms.

DATE: Comments, suggestions and requests to par;ticipate are due by September 8, 1987.

ADDRESS: Comments and suggestions must be mailed to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: John Robert Ewers, Executive Secretary, Section 18 Study Advisory Committee, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5866.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission (FMC) is in the process of assessing the impact of the Shipping Act of 1984 (1984 Act), 46 U.S.C. app. 1701–1720, on the international ocean shipping industry as required by section 18 of that Act, 46 U.S.C app. 1717. This project has been designated the Section 18 Study. Chairman Edward V. Hickey, Jr. has appointed Commissioner Edward J. Philbin to oversee this project.

Under the guidance of Commissinoer Philbin, the FMC's Bureau of Economic Analysis has drafted a plan of action to accomplish the Section 18 Study. (Hereinafter referred to as the Study Plan.) The Study Plan calls for, *inter alia*, the gathering of information from representatives of those interests affected by the 1984 Act to help ensure proper collection and evaluation of data relevant to the impact of the legislation.

The fundamental goal of the Study Plan is to fulfill the requirements of section 18(a) of the 1984 Act, which provides as follows:

> (a) Collection of Data.—For a period of 5 years following the enactment of this Act, the [Federal Maritime] Commission shall collect and analyze information concerning the impact of this Act upon the international ocean shipping industry, including data on:
>
> (1) increases or decreases in the level of tariffs;
>
> (2) changes in the frequency or type of common carrier services available to specific ports or geographic regions;
>
> (3) the number and strength of independent carriers in various trades; and
>
> (4) the length of time, frequency, and cost of major types of regulatory proceedings before the Commission.
>
> (46 U.S.C. app. 1717(a))

Section 18 further requires the FMC to consult with other federal agencies concerning the data collection and, within six months after the termination of the collection period, issue a report to Congress, a special statutory Advisory Commission on Conferences in Ocean Shipping (Advisory Commission), as well as those Federal agencies specifically designated, i.e., Department of Transportation, Department of Justice and the Federal Trade Commission. This report must specifically address the following:

> (1) The advisability of adopting a system of tariffs based on volume and mass of shipment;
>
> (2) The need for antitrust immunity for ports and marine terminals; and
>
> (3) The continuing need for the statutory requirement that tariffs be filed with and enforced by the FMC.
>
> (46 U.S.C. app. 1717(c)(3))

The designated Federal Agencies then have sixty days to furnish their analysis to Congress and the Advisory Commission. The Advisory Commission, in turn, will issue a report to the President and the Congress containing recommendations for administrative, judicial, and legislative actions that appear to be appropriate as a result of its evaluation of the impact of the 1984 Act. Accordingly, the data collected by the FMC under section 18 is of critical importance in accurately assessing the impact of the 1984 Act and the appropriate responses that may be required. Because the future of the ocean shipping industry will be significantly affected by this study, direct input in the study from those affected interests is warranted not only in terms of accuracy but also in terms of fairness to those interests.

The FMC believes that public discussion and recommendations by those interests affected by the Shipping Act of 1984 during the process of collecting and analyzing data on the impact of that Act is essential to the success of this effort. Accordingly, the FMC hereby proposes to establish an Advisory Committee (Committee) composed of such interests which is necessary for that purpose and which is in the public interest. Because this effort calls for the amassing of a substantial amount of varied data and both expert and practical evaluation thereof, it has been determined that much of the basic ground work of data collection be undertaken by study groups or subcommittees of the Committee comprised of volunteer representative members of each discrete industry segment.

In order to attain a balanced membership for the Committee, it is our intention to request that two representatives be selected by each of the various industry study groups which have already been formed or are in the process of formation to provide data to the FMC staff through the Committee. These separate study groups comprise representatives from: Conferences; Ocean Common Carriers; Non-Vessel-Operating Common Carriers; Shippers' Associations; Exporters and Importers; Customs Brokers; Forwarders; Ports; and Non-Port Marine Terminal Operators. These groups represent the major segments of the industry. The formation and membership of these groups have been the results of efforts of their constituents, not the FMC. The knowledge of the existence of these groups is widespread and membership is open to all industry members.

The FMC requests each group to submit in writing its nomination of two representatives to serve on the Committee. Should any other members of the industries represented by the study groups or other relevant interest groups express a desire to join the Committee, their written requests to participate would be treated equally. This process should ensure the attainment of a balanced representation on the Committee of well-qualified individuals.

It is proposed that the Committee will consist of 15–25 persons representing the following interests:

Conferences
Ocean Common Carriers
Non-vessel Operating Common Carriers
Customs House Brokers/Freight Forwarders
Shippers' Associations
Other Shippers
Ports
Non-Port Marine Terminal Operators
Transportation Service Firms

The FMC seeks public comments on the formation of the Committee, including the interests represented, the scope of its functions, and the needs of the public that should be addressed. Representatives will serve on the Committee without compensation but with reimbursement of out-of-pocket expenses directly associated with their participation. Facilities and support staff for the Committees will be provided by

the FMC at its offices in Washington, DC. Meetings of the Committee will be open to the public and a record of the proceedings will be maintained.

Requests to participate on the Committee should adequately describe the interest or interests expected to be represented and why the nominees can adequately represent such interest(s).

After receipt of all comments and requests to participate, the FMC will issue a Final Notice of Formation of the Advisory Committee stating the membership and the date and agenda of its first meeting.

By the Commission, June 30, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87-15455 Filed 7-7-87; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Availability of Funds for FY 1987; Epidemiologic Research Studies of Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection

The Center for Disease Control (CDC) announces the availability of funds for Fiscal Year 1987 for competitive cooperative agreement and/or research project grant applications to conduct epidemiologic research studies of AIDS and HIV infection. These include studies of: heterosexual, parenteral, and perinatal transmission; specific high-risk populations such as male and female prostitutes, homosexual and bisexual males, intravenous drug abusers, recipients of transfused blood and organs from HIV infected donors, and selected pediatric and adolescent populations; and HIV seroprevalence in hospitals, blood centers, and other select populations.

I. Authority

These cooperative agreements and/or grants are authorized under section 301(a), 311, and 318(d) of the Public Health Service Act, as amended. Regulations are set forth in 42 CFR Part 52, entitled "Grants for Research Projects." Catalog of Federal Domestic Assistance Number is 13.118.

II. Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, blood centers and other public and private organizations, State and local health departments and small, minority and/or women-owned businesses are eligible for these grants and/or cooperative agreements.

III. Background

The epidemic of acquired immunodeficiency syndrome (AIDS) continues in the United States with over 35,000 cases reported to CDC by May 1, 1987. The Public Health Service estimates that more than 1 million Americans are infected with HIV, the etiologic agent of AIDS, and that by 1991, the cumulative cases of AIDS meeting the CDC surveillance definition will total more than 270,000. Almost 60 percent of all reported AIDS cases have died, and the death toll is expected to rise to 179,000 by 1991. HIV, a human retrovirus, is transmitted sexually, through blood and blood products, through contaminated needles, and perinatally. Studies have found no evidence that AIDS is spread by casual contact with infected persons, and the advent of an antibody test for the virus in 1985 has virtually eliminated the risk of acquiring AIDS from donated blood or plasma.

Additional studies of the epidemiology of AIDS and HIV infection are needed to guide prevention and control efforts. Such issues as the natural history of the disease, risks of transmission, prevalence and trends in select populations, and the effectiveness of various prevention and control measures needed to be studied thoroughly.

IV. Purpose

The purpose of these awards is to assist researchers in the study of important epidemiologic questions concerning risks of transmission, natural history of the disease, the prevalence and trends of disease in certain populations, and the development and evaluation of behavioral recommendations for reducing AIDS and HIV infection.

V. Program Requirements

A. Cooperative Agreements

In a cooperative agreement, the CDC will assist the collaborator in conducting epidemiologic research of AIDS and HIV infection as described in Section VI. The application should be presented in a manner that demonstrates the applicant's ability to address the research problem in a collaborative manner with the CDC. In addition to the financial support provided, the CDC will provide assistance to the collaborator by: providing technical assistance in the design and conduct of the research; providing technical guidance in the development of study protocols, consent forms, and questionnaries, including training and pretesting as necessary; assisting in designing a data management system; performing selected laboratory tests; coordinating research activities among the different sites, including laboratories and consultants; and participating in the analysis of research information and the presentation of research findings.

B. Research Project Grants

A research project grant application should be intended and designed to establish, discover, develop, elucidate, or confirm information relating to the epidemiology of AIDS and HIV infection, as described in Section VI, including innovative methods, techniques, and approaches for dealing with questions surrounding the epidemiology of AIDS and HIV infection. These studies may generate information that is readily available to solve problems or contribute to a better understanding of the field.

C. Determination of Which Instrument to Use

Applicant may specify which type of award is preferred. The CDC will determine before making each award whether the use of a grant or cooperative agreement is appropriate based upon the need for substantial Federal involvement in the project. Projects funded through a cooperative agreement that involve collection of information from 10 or more individuals will be subject to review under the Paperwork Reduction Act.

VI. Programmatic Interest

Research concerns of programmatic interest to the health care community and CDC are listed below. Those listed are considered to be of significant importance in gaining a greater understanding of the epidemiology of AIDS and HIV infection. Applications responding to this announcement will be reviewed by CDC staff for their responsiveness and relevance to the following epidemiologic research issues:

A. *Epidemiologic study of the seroprevalence of antibody to HIV in selected pediatric populations of:* (1) Newborns and/or (2) children 1–8 years of age attending well-child clinics and children 1–8 tears of age who are hospitalized (in areas that have a minimum cumulative incidence of perinatal AIDS of 1 case per 100,000 children under 8 years of age). This study would also include the development of recommendations for prevention, education, health care and

social service programs for these populations. In this study, blood samples should be tested blindly (e.g., initially drawn for purposes other than determining a person's HIV antibody status and with all personal identifiers removed prior to HIV testing). Applicants may apply for assistance for studying one or both populations.

B. *Expanded epidemiologic studies of prostitutes:* (1) HIV infection and risk reduction in male prostitutes; (2) clients and steady partners or women who engage in prostitution; (3) introduction and evaluation of intervention strategies (e.g., condom usage) among female prostitutes. Applicants applying to conduct prostitute studies may apply for assistance for one, two, or all three study areas.

C. *Epidemiologic study of blood donors by assisting blood collection agencies (minimum 100,000 donations per year) to:* (1) Determine and monitor the extent of HIV infection in blood donors (distinguishing donors tested for the first time from donors tested more than once), evaluate "false positive" donors, characterize infective donors, and analyze socio-demographic characteristics of donors; and (2) interview and follow seropositive blood donors (in selected areas studied by agencies participating in C1. above) to monitor trends in risk factors for HIV infection. This may include behavioral studies of these donors and studies of their sexual partners. Applicants may apply for assistance for one or both study areas.

D. *Epidemiologic study of pregnant mothers and their infants to determine:* (1) The frequency of and risk factors for HIV transmission in infants born to infected mothers; (2) possible modes of transmission from mother to infant and the frequency of occurrence; (3) the effects of pregnancy and HIV infection on immune function of the infected mothers; and (4) the natural history of HIV infection in infants infected perinatally.

E. *Epidemiologic study of the transmission and natural history of HIV infection and related diseases in family members and sex partners of heterosexual patients with AIDS by assisting health providers to:* (1) Define the frequency of and risk factors for the transmission of HIV in families and sexual partners with AIDS and other infectious agents that HIV-infected patients commonly harbor (e.g., *Mycobacterium tuberculosis*); (2) define the natural history of HIV infection in index patients, family members and sex partners; and (3) investigate the role of diseases and conditions which may be associated with HIV infection in this population.

F. Epidemiologic studies of the seroprevalence of antibody to HIV in adolescents and young adults (in States reporting at least 100 cases of AIDS in persons ages 13–25), and case/control and/or descriptive studies to define and describe behavioral and other risk factors associated with HIV infection in this age group.

G. Epidemiologic study of heterosexual transmission of HIV from persons with transfusion-associated infection. Issues to be examined will include behavioral and biological risk factors for transmission.

VII. Availability of Funds

A total of $4.1 million is available in Fiscal Year 1987 to fund approximately 15 new or competing continuation cooperative agreements and grants. Of this, $1.5 million is for new programs and $2.6 million for existing programs. New applications are encouraged, but priority for funding will be given to continue existing programs. Awards are generally expected to range from $90,000 to $300,000. Applications should be submitted for a 12-month budget period and a 1 to 5-year project period. Continuation awards within a project period will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. The funding estimates outlined above may vary and are subject to change, depending upon the availability of funds.

VIII. Reporting Requirement

Annual performance and financial status reports are required no later than 90 days after the end of each budget period. Final financial status and performance reports are required 90 days after the end of each project period.

IX. Applications

A. Multiple Applications

Applicants may submit more than one application under this announcement. Each application, however, must be complete as it will be evaluated separately without reference to any other application, except for the epidemiologic studies of prostitutes and blood donors. In these cases one application may be submitted for each part. The application must be cross-referenced to all common parts.

B. Copies—Place of Submission

The original and two copies of the application should be submitted on Form PHS 5161–1 (revised 3–86) on or before August 10, 1987 to:

Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Room 321, Mail Stop E14, 255 East Paces Ferry Road NE., Atlanta, Georgia 30305

Application forms should be available in the institution's business office or from the above address.

C. Deadlines

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date.

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

D. Late Applications

Applications that do not meet the criteria in either paragraph C.1. or C.2. immediately above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

E. Reviews

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

F. Content

Applications must include a narrative which details the following:

1. The background and need for project support including information that relates to factors by which the application will be evaluated.

2. The objectives of the proposed project which are consistent with the purpose of the cooperative agreement and/or research project grant and which are measurable and time-phased.

3. The plan to assure the confidentiality for all participants (including compliance with the confidentiality requirements of section 318(e)(5) of the Public Health Service Act, 42 U.S.C. 247c(e)(5)) and to protect the rights of participants in accordance with 45 CFR Part 46 entitled "Protection of Human Subjects."

4. The methods that will be used to accomplish the objectives of the project. Of special importance, will be the applicant's plans to identify and enroll study participants.

5. The methods that will be used to evaluate the progress and results of the research.

6. Fiscal information pursuant to utilization of awarded funds in a manner consistent with the purpose and objectives of the project.

7. Letters of support from cooperating organizations. Each letter(s) should specify how that organization plans to participate in the proposed project and must be signed by responsible officials, i.e., medical director and/or chief administrative officer.

8. Any other information that will support the request for assistance.

X. Review Criteria

A. Initial and competing continuation applications will be reviewed and evaluated based on the evidence submitted which specifically describes the applicants' abilities to meet the following criteria:

1. The plans to develop and implement the study describing how study participants will be identified, enrolled, tested, and followed.

2. The ability to enroll and follow an adequate number of eligible study participants to assure proper conduct of the study. The known or projected prevalence of HIV infection in the population to be studied will be an important area of consideration.

3. The plan to protect the rights and confidentiality of all participants and ensure adequate participation.

4. The applicant's understanding of the research study objectives and their ability, willingness and/or need to cooperate in a study with CDC.

5. The applicant's current activities in AIDS and HIV research and how they will be applied to achieving the objectives of the study. Letters of support from cooperating organizations should be included that demonstrate the nature and extent of such cooperation.

6. The size, qualifications, and time allocation of the proposed staff and the availability of facilities to be used during the research study.

7. How the project will be administered.

8. The proposed schedule for accomplishing the activities of the research, including time frames.

9. The quality of an evaluation plan which specifies the methods and instruments to be used.

10. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

B. Noncompeting continuation awards within the project period will be made on the basis of the following criteria:

1. The accomplishments of the current budget period show that the applicant is meeting its objectives.

2. The objectives for the new budget period are realistic, specific, and measurable.

3. The methods described will clearly lead to achievement of these objectives.

4. The evaluation plan will enable the recipient to monitor whether the methods are effective.

5. The budget requested is clearly explained, adequately justified, reasonable, and consistent with the intended use of funds.

XI. Information

Information on application procedures, copies of application forms, and other material may be obtained from Marsha Driggans, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, or by calling (404) 262-6575, FTS 236-6575. Technical information may be obtained from John Narkunas, AIDS Program, Center for Infectious Diseases, Centers for Disease Control, Atlanta, Georgia, 30333, Telephone (404) 329-3162, FTS 236-3162.

Dated: July 1, 1987.

Glenda S. Cowart,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87-15438 Filed 7-7-87; 8:45 am]

BILLING CODE 4160-18-M

Revision of the NIOSH Work Practices Guide for Manual Lifting Workplace Protection Factor Study of Negative Pressure Respirators; Open Meetings

The following meetings will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Revision of the NIOSH Work Practices Guide for Manual Lifting

Date: July 14, 1987
Time: 9 a.m.-3 p.m.
Place: Auditorium, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226
Purpose: To discuss the development of an addendum to the NIOSH Work Practices Guide for Manual Lifting (WPG). The addendum would provide information for establishing task limits for activities other than sagittal plane lifting. Another discussion topic is the planned development of a User's Guide, which would assist those responsible for implementing WPG recommendations and identify simplified procedures for applying these guidelines.
Additional information may be obtained from: Donald W. Badger, Ph.D., Division of Biomedical and Behavior Science, NIOSH, CDC, Cincinnati, Ohio 45226, Telephones: FTS: 684-8291, Commercial: (513) 533-8291

Workplace Protection Factor Study of Negative Pressure

Date: August 11, 1987
Time: 9 a.m.-4:30 p.m.
Place: Room 138, Appalachian Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505
Purpose: To review a study protocol to conduct research and field studies to measure workplace protection factors for half- and full-facepiece negative pressure respirators against several exposure agents, and compute assigned protection factors from this data. The study is also to determine if a relationship exists between qualitative and quantitative facepiece fit data, facial dimensions, and workplace protection factors.
Additional information may be obtained from: Barry G. Pallay, Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephones: FTS: 923-4863, Commercial: 304/291-4863

Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Dated: July 2, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-15525 Filed 7-7-87; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 87D-0168]

Soy Drinks and Other Beverages That Purport To Be Infant Formulas or Milk Substitutes; Availability of Import Alert

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of an import alert regarding soy drinks and other beverages that purport to be infant formulas or milk substitutes.

DATES: The import alert has been in effect since June 26, 1985. The second update of the alert was issued on June 30, 1987.

ADDRESS: Written requests for single copies of Import Alert No. 40–01 should be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your request.)

FOR FURTHER INFORMATION CONTACT: Curtis E. Coker, Jr., Center for Food Safety and Applied Nutrition (HFF–314), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0024.

SUPPLEMENTARY INFORMATION: Import Alert No. 40–01 provides for continued close surveillance of beverages that purport to be infant formulas (complete or partial substitutes for human milk), but that do not provide adequate nutrition for infants or that are otherwise in violation of the infant formula provisions of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a).

The alert also provides for surveillance of beverages that purport to be substitutes for milk (other than human milk). If improperly labeled, such products are in violation of other provisions of the act.

As with all import alerts, this alert does not limit the agency's enforcement discretion to refuse or permit admission of a particular product offered for import after an evaluation of all relevant facts. FDA welcomes reports of any nutritionally inadequate products promoted as infant formulas and reports of any adverse affects that may have resulted from the use of such products. Such reports should be sent to Curtis E. Coker, Jr. (address above). Requests for single copies of the import alert should refer to the docket number found in brackets in the heading of this document and should be addressed to the Dockets Management Branch (address above).

Dated: June 25, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–15452 Filed 7–7–87; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Intramural Research Training Award Program

The National Institutes of Health (NIH) announces the Intramural Research Training Award (IRTA) program that is created pursuant to section 405(b)(1)(C) of the Public Health Service Act, 42 U.S.C. 284(b)(1)(C). The IRTA Program is designed to provide advanced training and practical research experience at the National Institutes of Health to physicians and Ph.D.-level medical research investigators, who are at the beginning stages of their professional research careers, i.e., those who have less than three years of relevant postdoctoral research experience.

Subject to the availability of funds and other NIH resources, the awards may be made initially for one or two years and may be renewed in one-year increments with a maximum of three years. Candidates must be U.S. citizens, noncitizen nationals of the United States, or individuals lawfully admitted for permanent residence in the U.S. Applicants may not be excluded from consideration for the IRTA Program on the basis of race, color, religion, sex, handicap, age, national origin, political affiliation, or any other nonmerit factor. The initial stipend is $20,000 per annum for investigators with less than one year of postdoctoral experience, $21,500 for investigators with one to two years of postdoctoral experience, and $23,000 for investigators with two to three years of postdoctoral experience.

Interested persons may apply directly to a specific NIH research institute or to the National Institutes of Health, Building 31, B3C03, NIH, Bethesda, MD 20892, for concurrent referral to all research institutes having possible interest. Any interested individual may at any time apply by submitting a request for an IRTA award that includes: curriculum vitae, bibliography, three letters of reference emphasizing research potential, statement of applicant's research goals, official copy of doctoral degree, and an official copy of graduate or medical school transcript. This information must be submitted in order to receive due consideration for an award and will be used to determine the eligibility and quality of potential awardees. The requested information will be available to only NIH program officials unless otherwise required by law.

Questions about the IRTA Program may be addressed to the Office of Intramural Affairs, Shannon Building, Room 103, NIH, Bethesda, MD 20892, Telephone (301) 496–4920.

The IRTA Program became effective on October 1, 1986; it is created pursuant to the authority included in section 2 of the Health Research Extension Act of 1985 which amended the PHS Act. Public Health Service regulations at 42 CFR Part 63 will be revised to describe the requirements for the NIH programs of research training pursuant to section 405 of the PHS Act. The Department of Health and Human Services, regulatory agenda, published in the October 27, 1986, **Federal Register** (51 FR 38399), Item 655, indicates NIH intent to revise its regulations to conform to provisions of the Health Research Extension Act of 1985. The National Institutes of Health will also submit through the Department of Health and Human Services to the Office of Management and Budget the proposed collection of information requirements associated with the IRTA Program regulations for review under the requirements of 5 CFR 1320. [The information collection requirements associated with this program announcement have been approved by the OMB (0925–0299).]

Dated: March 19, 1987.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 87–15450 Filed 7–7–87; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is revising a notice describing a system of records maintained by the U.S. Geological Survey. The notice is titled "Computer Registration System—Interior, USGS–18" (formerly titled "Computer Services Users"). Except as noted below, all changes being published are editorial in nature, and reflect minor administrative revisions which have occurred since the publication of the material in the **Federal Register** on October 2, 1986 (51 FR 35301). The revised notice is published in its entirety below.

References to customer billing records and uses have been deleted since the records are no longer used for such purposes. Accordingly, the routine disclosure to consumer reporting agencies has been deleted, and the statutory authority for the system has been revised. Additional entries are added to the descriptions of the system's location, system manager, and the retrievability of records.

Since these changes do not involve any new or intended use of the information in the system of records, the notice shall be effective July 8, 1987.

Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

Dated: June 26, 1987.

James P. Jadlos,

Acting Director, Office of Information Resources Management.

INTERIOR/USGS-18

SYSTEM NAME:

Computer Registration System—Interior, USGS-18.

SYSTEM LOCATION:

U.S. Geological Survey (USGS), Information Systems Division, National Center, Mail Stop 801, Reston, Virginia 22092; USGS, Denver Service Center, Box 25046, Mail Stop 801, Denver, Colorado 80225; USGS, Menio Park Service Center, 345 Middlefield Road, Menlo Park, California 94025; USGS, Flagstaff Service Center, 2255 N. Gemini Drive, Flagstaff, Arizona 86001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of Computer Services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, computer user number, city/state telephone number, subsystem registration, account number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 486(c); 41 CFR Part 201-7.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is: (a) To record registration information for computer users; and (b) to contact computer users. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (5) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OR RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk.

RETRIEVABILITY:

By user name, user number, city/state, telephone number, subsystem, account number.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 102-01.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, information Systems Division, U.S. Geological Survey, Mail Stop 801, National Center, Reston, Virginia 22092; Chief, Denver Federal Center, U.S. Geological Survey, Box 25046, Mail Stop 801, Denver, Colorado 80225; Chief, Menlo Park Service Center, U.S. Geological Survey, 345 Middlefield Road, Menlo Park, California 94025; Chief, Flagstaff Service Center, U.S. Geological Survey, 2255 N. Gemini Drive, Flagstaff, Arizona 86001.

NOTIFICATION PROCEDURE:

Inquires regarding the existence of records should be addressed to the pertinent System Manager. A written, signed request stating that the requester seeks information concerning records pertaining to him/her is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access shoul be addressed to the pertinent System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the pertinent System Manager and must meet the content requirements of 43 CFR. 2.71.

RECORD SOURCE CATEGORIES:

Individual users of computer services.

[FR Doc. 87-15422 Filed 7-7-87; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

[UT-050-07-4410-08]

Availability of Draft Environmental Assessment (EA); Mt. Ellen/Blue Hills Wilderness Study Areas; Richfield, UT

AGENCY: Bureau of Land Management, Richfield, Utah, Interior.

ACTION: Notice of comment period for the Mt. Ellen/Blue Hills Rehabilitation Project Draft EA, ending 30 days from publication of this notice.

SUMMARY: The EA analyzes the impacts of the proposed action and alternatives to rehabilitate 167 acres of chaining within the Mt. Ellen/Blue Hills Wilderness Study Areas (UT-050-238).

The draft EA is available at the Richfield District Office, 150 East 900 North, Richfield, Utah 84701. For additional information contact Roy Edmonds, Environmental Coordinator, at the above address or call (801) 896-8221.

Larry R. Oldroyd,

Associate District Manager.

June 26, 1987.

[FR Doc. 87-15423 Filed 7-7-87; 8:45 am]

BILLING CODE 4410-DQ-M

[WY-930-07-4212-14; W-105860]

Realty Action; Sale of Public Land in Natrona County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: Notice of Intent to Amend the Platte Resource Area Resource Management Plan; and Notice of Realty Action, proposed direct sale of public land parcels in Natrona County, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bill Mortimer (Area Manager), Platte River Resource Area, (307) 261-5191.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) proposes to sell the appropriate land parcels, surface estate and all minerals, within the following described public

lands to Umetco Minerals Corporation pursuant to section 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of 1976, 43 U.S.C. 1713, 1719:

Sixth Principal Meridian

T. 33 N., R. 89 W.,
Sec. 15, S½.

The above land area aggregates 320 acres in Natrona County.

To consider this proposal, the BLM must amend the Platte River Resource Management Plan (RMP). The Land Report and environmental assessment (EA) prepared for this sale will also serve as the amendment to the RMP.

Umetco Minerals Corporation wishes to acquire the lands for possible use as a disposal site for uranium mill tailings which are now located at Riverton, Wyoming. Removal and disposal of those mill tailings would be under a contract to be awarded by the Department of Energy.

The proposed direct sale to Umetco Minerals Corporation would be made at fair market value. Additionally, Umetco will be required to submit a nonrefundable application fee of $50.00 in accordance with 43 CFR Subpart 2720 for conveyance of all unreserved mineral interests in the lands.

All unpatented mill site and lode mining claims encumbering the lands and held by Umetco Mineral Corporation would be relinquished by Umetco Minerals Corporation upon conveyance of the surface estate.

The proposed sale will serve important public objectives. All these lands are encumbered by mining claims, and most of the lands are or have been mined for uranium or disturbed by mining related activities. The lands contain no other known public values. The environmental assessment/land report covering the proposed sale will be available for review at the BLM, Platte River Resource Area Office, Mills, Wyoming.

Conveyance of the land would be subject to the following:

1. Reservation of a right-of-way for ditches or canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. At this time, there are two pending oil and gas lease applications involved (W-93333 and W93334) which may require reservation of oil and gas to the United States with the right to prospect, explore, and of disposal.

3. Any other valid existing rights including rights-of-way that are identified during the evaluation process.

A portion of the public lands involved are leased for grazing by Clear Creek Cattle Company (Lease No. GR-6107). No cancellation of grazing preference is expected as a result of this proposal.

The public lands described above shall be segregated from all forms of appropriation under the public land laws, including the mining and mineral leasing laws upon publication of this notice in the **Federal Register**. The segregative effect will end upon issuance of the patent or 270 days from the date of this publication, whichever comes first.

For a period of 45 days from the date of this notice interested parties may submit comments on this action to the District Manager, Casper District, BLM, Casper, Wyoming. Any adverse comments will be evaluated by the State Director, who may vacate or modify the reality action and issue a final determination. In the absence of adverse comments or in the absence of any action by the State Director, this realty action will become final.

Hillary A. Oden,

State Director.

June 30, 1987.

[FR Doc. 87-15497 Filed 7-7-87; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Klamath Fishery Management Council and Klamath River Basin Fisheries Task Force Meetings

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, this notice announces the initial meetings of the Klamath Fishery Management Council and the Klamath River Basin Fisheries Task Force established under the authority of the Klamath River Basin Fish and Wildlife Restoration Act. The Council meeting is to be chaired by Dr. J. Lisle Reed, Science Advisor to the Secretary of the Interior. The Task Force meeting is to be chaired by Mr. E. W. (Wally) Steucke, Assistance Regional Director—Fishery Resources, U.S. Fish and Wildlife Service, Portland, OR. Both meetings are open to the public.

DATES: The Council meeting will be held from 9:00 A.M. to 4:00 P.M., Wednesday, July 22, 1987. The Task Force meeting is to be held from 9:00 A.M. to 4:00 P.M., Thursday, July 23, 1987.

ADDRESS: Both meetings will be held at the Eureka Inn, 7th and F Streets, Eureka, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, Klamath Field Office, U.S. Fish and Wildlife Service, Yreka, CA, (916) 842-6131, or Mr. Frederic Vincent, Division Manager, Fishery Resources, U.S. Fish and Wildlife Service, Portland OR, (503) 231-6216.

SUPPLEMENTARY INFORMATION: The Klamath Fishery Management Council (the Council) was established on June 17, 1987, and the Klamath River Basin Fisheries Task Force (the Task Force) was established on June 3, 1987, pursuant to sections 3(a) and 4(a), respectively, of the Klamath river Basin Fish and Wildlife Restoration Act (16 U.S.C. 460ss-2(a) and 3(a) and the Federal Advisory Committee Act (5 U.S.C. App. I). The Council advises the appropriate fishery management agencies concerning harvest of anadromous fish originating in the Klamath River Basin and is responsible for developing plans and policies as the basis for those fishery management recommendations. The Task Force advises the Secretary of the Interior (the Secretary) on planning and implementation of the Klamath River Basin Conservation Area Restoration Program (the Program). The Program is a 20-year effort aimed at restoring the anadromous fish stocks of the Klamath River Basin which will involve Federal and non-Federal participation and funding. The Secretary has delegated his responsibility for developing and implementing the Program to the Director of the U.S. Fish and Wildlife Service.

During its initial meeting, the Council will review its statutory authority, including a summary of actions taken to date to implement the law. The Council's Charter, along with proposed operating procedures for the Council, will be discussed. Items carried over from the *ad hoc* Klamath River Salmon Management Group, including the draft 5-year allocation agreement, will be reviewed. Technical reports on status and outlook for 1987 ocean and river chinook harvest, and Council recommendations, if any, for adjustment in 1987 harvest allocations will be addressed. A report on fishery law enforcement in the Klamath River Basin and vicinity will be presented and the State/Federal memorandum of agreement on law enforcement required under section 5 of the Klamath River Basin Fish and Wildlife Restoration Act (16 U.S.C. 460ss-4) will be discussed. Selection of officers, appointment of committees, and work assignments will conclude the meeting.

The Task Force will begin its initial meeting with a review of its statutory mandate, including a summary of

actions taken to implement the law. The Task Force's charter, along with proposed operating procedures will be discussed. The status of funding for and development of the Program will be outlined. The Klamath Fisheries Resource Plan developed for the Bureau of Indian Affairs will be summarized and discussed. How implementation of the Klamath River Basin Fish and Wildlife Restoration Act might best fit with the Trinity River Fishery Restoration Program and other ongoing fishery restoration efforts in the Klamath River Basin will be discussed. State and local contributions as called for by the Act will be discussed. Selection of officers, appointment of committees, and work assignments will conclude the meeting.

Dated: July 2, 1987.

Gary Edwards,

Assistant Director, Fisheries, U.S. Fish and Wildlife Service.

[FR Doc. 87-15507 Filed 7-7-87; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 7750, Block 100, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on June 22, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approaval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 29, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-15425 Filed 7-7-87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Intention To Negotiate Concession Contract; Charlestown Navy Yard, MA

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract authorizing the operation of restaurant services and facilities at the Charlestown Navy Yard, Boston National Historical Park, Massachusetts, for a period of fifteen (15) years from the date the contract is signed. The Prospectus which describes this opportunity will be released to the public in the near future and sixty days will be allowed from the date of release for responses to be received.

This proposed contract requires a construction and improvement program. The construction and improvement program required was addressed in the General Management Plan/Environmental Assessment, dated August 1980, as amended by the Revision, dated March 26, 1987, which established a Finding of No Significant Impact for the Charlestown Navy Yard.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be postmarked or hand delivered on or before the sixtieth (60th) day following release date shown on the cover of the Prospectus to be considered and evaluated.

Interested parties should contact the Superintendent, Boston National Historical Park for information as to the requirements of the proposed contract and for application materials.

Dated: June 15, 1987.

Steven H. Lewis,

Deputy Regional Director, North Atlantic Region.

[FR Doc. 87-15456 Filed 7-7-87; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-338 Through 340 (Final)]

Urea From the German Democratic Republic, Romania, and the Union of Soviet Socialist Republics

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from the German Democratic Republic, Romania, and the Union of Soviet Socialist Republics of solid urea, provided for in item 480.30 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Vice Chairman Brunsdale and Commissioner Lodwick did not participate in these determinations.

Background

The Commission instituted these investigations effective January 2, 1987, following preliminary determinations by the Department of Commerce that imports of urea from the German Democratic Republic, Romania, and the Union of Soviet Socialist Republics were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 23, 1987 (52 FR 2623). On February 20, 1987, Commerce published a notice in the **Federal Register** (52 FR 5322) postponing its final determinations. Accordingly, the Commission published a notice in the **Federal Register** of March 11, 1987 (52 FR 7497) revising its schedule for the conduct of the investigations. The hearing was held in Washington, DC, on May 28, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 1, 1987. The views of the Commission are contained in USITC Publication 1992 (July 1987), entitled "Urea from the German Democratic Republic, Romania, and the Union of Soviet Socialist Republics: Determinations of the Commission in Investigations Nos. 731-TA-338 through 340 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: July 1, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-15502 Filed 7-7-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-259]

Certain Battery-Powered Smoke Detectors; Commission Decision Not To Review Initial Determination Terminating the Investigation Based on Withdrawal of Complaint

AGENCY: International Trade Commission.

ACTION: Decision not to review initial determination terminating the above-captioned investigation as to all remaining respondents.

SUMMARY: The Commission has determined not to review the initial determination (ID) (Order No. 43) of the presiding administrative law judge (ALJ) terminating the investigation as to respondents Dicon Systems Limited, Firex Corp., Fyrnetics, Inc., Jameson Homes Products, Inc., Management Investment & Company, Ltd., Mott Inc. North American Philips Corporation, Southwest Laboratories, Inc. Ten-Tek Electronics, Inc., Universal Security Instruments, Inc., and Wing Wah Chong Investment Company, Ltd. on the basis of withdrawal of the complaint. Termination of these remaining respondents terminates the entire investigation.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436, telephone 202-253-1693.

SUPPLEMENTARY INFORMATION: On April 10, 1987, complaints Pittway Corporation and BRK/Colorado, Inc. filed a notice of withdrawal of their complaint with prejudice. A joint motion to terminate the investigation was filed at the same time by complainants and the remaining respondents. The Commission investigative attorney filed a response in support of the notice of withdrawal and the joint motion to terminate. On June 3, 1987, the presiding ALJ issued an ID, Order No. 43, granting the joint motion to terminate the investigation as to the remaining respondents. No petitions for review or comments from other Government agencies were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53). Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD Terminal on 202-724-0002.

Issued: June 29, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-15504 Filed 7-7-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-242]

Certain Dynamic Random Access Memories, Components Thereof, and Products Containing Same; Commission Decision To Extend the Deadline for Determining Whether To Review Final Initial Determination

AGENCY: International Trade Commission.

ACTION: Extension of deadline for deciding whether to review final initial determination.

SUMMARY: Notice is hereby given that the Commission has determined to extend until July 24, 1987, the deadline by which it must decide whether to review the final initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0359.

SUPPLEMENTARY INFORMATION: On May 21, 1987, the presiding ALJ issued her final ID finding that there is a violation of section 337 in the unauthorized importation and sale of certain dynamic random memories by two of the respondents to the investigation, and that there is no violation of section 337 by the other respondents. The original deadline for deciding whether to review the ALJ's final ID was July 10, 1987.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1377) and §§ 201.14(b) and 210.53(h) of the Commission's Rules of Practice and Procedure (19 CFR 201.14(b), 210.53(h).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: June 29, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-15505 Filed 7-7-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-260]

Certain Feathered Fur Coats and Pelts, and Process for the Manufacture Thereof; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Jindo Industries, Ltd. (Jindo).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on July 2, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: July 2, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-15503 Filed 7-7-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-255]

Certain Garment Hanger; Commission Determination Not To Review Initial Determination Finding Respondents in Default and Imposing Procedural Sanctions

AGENCY: International Trade Commission.

ACTION: Nonreview of initial determination (ID) finding two respondents in default and imposing procedural sanctions on four respondents.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) ID finding respondents Lo Tung Ltd. (Lo Tung) and Build-Up Plastic & Metal Co., Ltd. (Build-Up) in default and imposing procedural sanctions on Lo Tung and Build-Up and on respondents Pasagarda and Hangers Unlimited (Milwaukee) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Charles H. Nalls, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1626.

SUPPLEMENTARY INFORMATION: On April 3, 1987, the ALJ ordered respondents Lo Tung, Build-Up, Pasargarda, and Hangers Unlimited (Milwaukee) to show cause why each should not be held in default for failure to respond properly to the Commission investigation attorney's discovery requests and the ALJ's discovery order (Order No. 39). No responses to the ALJ's show cause orders were filed.

On May 28, 1987, the ALJ issued an ID (Order No. 46) finding respondents Lo Tung and Build-Up in default pursuant to Commission rule 210.25 (19 CFR 210.25) and drawing adverse inferences in accordance with Commission rule 210.36(b) against Lo Tung and Build-Up, as well as against respondents Pasargarda and Hangers Unlimited (Milwaukee), which had previously been found in default. No petitions for review of the ID were received nor were any government agency comments received.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: July 1, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-15506 Filed 7-7-87; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Maui Contractors Association; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment and Competitive Impact Statement ("CIS") have been filed with the United States District Court for the District of Hawaii in *United States v. Maui Contractors Association.* The Complaint in this case alleges that the Maui Contractors Association unreasonably restrained competition by adopting and adhering to certain rules governing the submission of bids by specialty contractors to general contractors on a substantial number of construction projects in Hawaii.

The proposed Final Judgment requires the defendant to cancel all formal and informal rules that restrain negotiations between general contractors and specialty contractors or that restrain general contractors from receiving sub-bids from, or awarding subcontracts to, specialty contractors.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses to them, will be published in the Federal Register and filed with the Court. Comments should be directed to Gary R. Spratling, Chief, San Francisco Field Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San

Francisco, California 94102 (telephone: 415/556–6300).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Robert J. Staal, Phillip H. Warren, Howard J. Parker; Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, (415) 556–6300, Attorneys for the United States.

Robert S. Katz, Torkildson, Katz, Jossem, Fonseca & Moore, Amfac Bldg., 15th Floor, 700 Bishop Street, Honolulu, Hawaii 96813, (808) 521–1051, Attorneys for Maui Contractors Association.

U.S. District Court for the District of Hawaii

United States of America, Plaintiff v. *Maui Contractors Association*, Defendant, Antitrust.

Filed: June 16, 1987.

Civil No. 870466ACK

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (5 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the Plaintiff:

Charles F. Rule,

Acting Assistant Attorney General.

Roger B. Andewelt,

Judy Whalley,

Gary R. Spratling,

Attorneys, Department of Justice.

Daniel A. Bent,

United States Attorney, District of Hawaii.

Robert J. Staal,

Phillip H. Warren,

Howard J. Parker,

Attorneys, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102; Telephone: (415) 556–6300.

For the Defendants:

Robert S. Katz,

Counsel for Maui Contractors Association.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, (415) 556–6300, Attorneys for the United States.

U.S. District Court for the District of Hawaii

United States of America, Plaintiff v. *Maui Contractors Association*, Defendant, Antitrust.

Filed: June 16, 1987.

Civil No. 870466ACK

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on June 16, 1987, and plaintiff and defendant, by their respective attorneys, having consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against, or any admission by, any party with respect to any issue of fact or law herein;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

Ordered, Adjudged, and Decreed as follows:

I.

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. 1).

II.

Definitions

As used in this Final Judgment:

A. "Awarding authority" means any governmental or private entity that contracts for the performance of construction projects;

B. "General contractor" means any person who contracts with awarding authorities for the performance of construction projects;

C. "Specialty contractor," also known as a subcontractor, means any person who supplies specialty contracting services (e.g., plumbing, electrical, masonry) to general contractors for construction projects;

D. "Material supplier" means any person who supplies materials to general or specialty contractors for use on construction projects;

E. "Person" means any individual, partnership, firm, association, corporation, or other business or legal entity;

F. "Prime bid" means an offer to an awarding authority by a general contractor for the purpose of obtaining a contract for a construction project;

G. "Sub-bid" means an offer to a general contractor by a specialty contractor to supply specialty contracting services for a construction project, or by a material supplier to supply materials for a construction project;

H. "Confirmation bid" means written confirmation of a sub-bid, which confirmation is filed by a specialty contractor or material supplier with a bid depository; and

I. "Bid depository" means a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, or that receives confirmation bids filed by specialty contractors and material suppliers.

III.

This Final Judgment applies to the defendant Maui Contractors Association ("MCA") and to each of its subsidiaries, successors, and assigns, and to each of its officers, directors, agents, and managers and other employees, and to all other persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

Defendant is enjoined and restrained from directly or indirectly continuing, maintaining, initiating, adopting, ratifying, entering into, carrying out, furthering, disseminating, publishing, or

enforcing any bidding procedure, plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement that has the purpose or effect of:

A. Suppressing, restraining, or discouraging general contractors and specialty contractors or material suppliers from negotiating at any time sub-bids on construction projects;

B. Suppressing, restraining, or discouraging general contractors from receiving sub-bids from, or awarding subcontracts to, specialty contractors or material suppliers; or

C. Stating that negotiation of sub-bids is contrary to any policy of MCA.

V.

A. Defendant is ordered and directed to cancel and rescind within sixty (60) days of the date of entry of this Final Judgment, and is prohibited from directly or indirectly reinstating, every plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement that is inconsistent with this Final Judgment, including provisions in its bidding procedure which provide that:

1. Confirmation bids for all specialty subcontractors or material suppliers must be filed with the MCA bid depository;

2. General contractors may award a specialty or material supply subcontract only to bidders who have formally filed bids with the MCA bid depository in compliance with its rules and procedures;

3. Filed bids may not be altered or changed after the deadline for their filing;

4. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

5. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository;

6. Prior to the prime bid opening, general contractors may not divulge any information to a specialty contractor or material supplier regarding any sub-bid received; and

7. If a construction project is altered in scope, the general contractor must continue to deal with the low filed bidders or parties he used in covering the affected item(s) of work.

B. Defendant is ordered and directed to include in any MCA rules concerning bidding for contracts on construction projects a statement that no MCA rule or policy prohibits negotiation of sub-bids, or requires that subcontracts be awarded only on sub-bids filed in accordance with MCA rules.

VI.

Nothing in Sections IV and V of this Final Judgment shall prohibit defendant from:

A. Complying with any requirement of an awarding authority regarding the procedures general contractors must follow in obtaining sub-bids for the preparation of prime bids; or

B. Maintaining a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, so long as use of the facility by any contractor is voluntary.

VII.

Defendant is ordered and directed to:

A. Furnish a copy of this Final Judgment to each of its officers, directors, agents, and managers within thirty (30) days after the date of the entry of this Final Judgment;

B. Furnish a copy of this Final Judgment to any successors to its officers, directors, agents, and managers within thirty (30) days after each successor becomes associated with the defendant;

C. Obtain from each of its officers, directors, agents, and managers, and their successors, who have been provided a copy of this Final Judgment, a signed receipt therefor, which receipt shall be retained in the defendant's files;

D. Attach to each copy of this Final Judgment furnished to its officers, directors, agents, and managers, and their successors, a statement in the form set forth in Appendix A attached hereto, with the following sentence added to the last paragraph of the letter: "Sections IV and V of the Final Judgment apply to you. If you violate these provisions, you may subject MCA to a fine, and you may also subject yourself to a fine and imprisonment."; and

E. Hold, within seventy-five (75) days after the date of entry of this Final Judgment, a meeting of its officers, directors, agents, and managers, at which meeting such persons shall be instructed concerning the defendant's and their obligations under this Final Judgment. Similar meetings shall be held at least once a year during the term of this Final Judgment; provided, however, that no meeting must be held during any calendar year in which defendant has had no bidding procedure, plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement concerning any aspect of bidding for contracts on construction projects.

VIII.

Defendant is ordered and directed to:

A. Furnish a copy of this Final Judgment together with a letter on the letterhead of MCA, in the form set forth in Appendix A attached hereto, to each of its members within thirty (30) days after the date of entry of this Final Judgment;

B. Furnish a copy of this Final Judgment together with a letter on the letterhead of MCA, in the form set forth in Appendix A attached hereto, to each new member within thirty (30) days after the member joins MCA; and

C. Publish in the *GCA Weekly Bid Bulletin*, or in the event GCA ceases publication of its *Weekly Bid Bulletin* in a comparable construction trade publication, the notice attached thereto as Appendix B.

IX.

Defendant is ordered and directed to:

A. Establish and implement a plan for monitoring compliance by its officers, directors, agents, and managers and other employees with the terms of the Final Judgment;

B. File with this Court and serve upon the plaintiff, within ninety (90) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with this Final Judgment; and

C. File with this Court and serve upon the plaintiff annually on each anniversary date during the term of this Final Judgment an affidavit setting forth all steps it has taken during the preceding year to discharge its obligations under this Final Judgment.

X.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be premitted:

1. Access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of the defendant and without restraint or interference from it,

to interview officers, directors, agents, and managers and other employees of the defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such non-privileged written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and indentifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

XI.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance wherewith, and for the punishment of any violation hereof.

XII.

This Final Judgment will expire ten (10) years from its date of entry.

XIII.

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

Appendix A

Re: *United States* v. *Maui Contractors Association* (Civil No. _____)

Dear Sir or Madam: The Maui Contractors Association ("MCA") has recently entered into a Final Judgment with the United States Department of Justice to settle a civil antitrust case filed against the Association. That case, *United States* v. *Maui Contractors Association* (Civil No. _____), concerned the MCA's bidding procedure that governed a substantial number of contracts on construction projects in the State of Hawaii. Our Association has been cooperating with the Department of Justice regarding this matter, and we have voluntarily agreed to the revisions of our bid depository rules outlined below. This Final Judgment does not constitute a finding or admission of wrongdoing.

Under the terms of the Final Judgment signed by Judge _____ of the District of Hawaii, MCA has agreed to eliminate all bid procedures and practices that in any manner may:

1. Restrict or discourage general contractors and specialty contractors or material suppliers from negotiating sub-bids; or

2. Restrict or discourage general contractors from accepting sub-bids from, or awarding subcontracts to, specialty contractors or material suppliers.

Specifically, MCA has agreed to delete from its bidding procedure rules which provide that:

1. Confirmation bids for all speciality subcontracts or material supplies must be filed with the MCA bid depository;

2. General contractors may award a specialty or material supply subcontract only to bidders who have formally filed bids with the MCA bid depository in compliance with its rules and procedures;

3. Filed bids may not be altered or changed after the deadline for their filing;

4. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

5. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository;

6. Prior to the prime bid opening, general contractors may not divulge any information to a specialty contractor or material supplier regarding any sub-bid received; and

7. If a construction project is altered in scope, the general contractor must continue to deal with the low filed bidders or parties he used in covering the affected item(s) of work.

The General Contractors Association of Hawaii, Hawaii Island Contractors Association, Gypsum Drywall Contractors of Hawaii, Mason Contractors Association of Hawaii, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii, Plumbing & Mechanical Contractors Association of Hawaii, and Sheet Metal Contractors Association have also recently settled civil antitrust cases and have agreed to eliminate provisions in their bidding procedures similar to the MCA rules being eliminated.

A copy of the entire Final Judgment is enclosed with this letter and will in the future be available upon request. I urge you to read it carefully.

Sincerely yours,

Appendix B

The Maui Contractors Association ("MCA") has recently entered into a Final Judgment with the United States Department of Justice to settle an antitrust case filed against the Association. That case, *United States* v. *Maui Contractors Association* (Civil No. _____, concerned the MCA's bidding procedure that governed a substantial number of contracts on construction projects in the State of Hawaii. MCA has been cooperating with the Department of Justice regarding this matter, and has voluntarily agreed to the revisions of its bidding procedure outlined below. This Final Judgment does not constitute a finding or admission of wrongdoing.

Under the terms of the Final Judgment signed by Judge _____ of the District of Hawaii, MCA has agreed to eliminate all bid procedures and practices that in any manner may:

1. Restrict or discourage general contractors and specialty contractors or material suppliers from negotiating sub-bids; or

2. Restrict or discourage general contractors from accepting sub-bids from, or awarding subcontracts to, specialty contractors or material suppliers.

Specifically, MCA has agreed to delete from its bidding procedure rules which provide that:

1. Confirmation bids for all specialty subcontracts or material supplies must be filed with the MCA bid depository;

2. General contractors may award a speciality or material supply subcontract only to bidders who have formally filed bids with the MCA bid

depository in compliance with its rules and procedures;

3. Filed bids may not be altered or changed after the deadline for their filing;

4. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

5. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository;

6. Prior to the prime bid opening, general contractors may not divulge any information to a speciality contractor or material supplier regarding any sub-bid received; and

7. If a construction project is altered in scope, the general contractor must continue to deal with the low filed bidders or parties he used in covering the affected item(s) of work.

The General Contractors Association of Hawaii, Hawaii Island Contractors Association, Gypsum Drywall Contractors or Hawaii, Mason Contractors Association of Hawaii, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii, Plumbing & Mechanical Contractors Association of Hawaii, and Sheet Metal Contractors Association have also recently settled civil antitrust cases and have agreed to eliminate provisions in their bidding procedures similar to the MCA rules being eliminated.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, 16th Floor, Box 36046, San Francisco, California 94102, Telephone: 415/556-6300, Attorneys for the United States.

United States District Court for the District of Hawaii

United States of America, Plaintiff, v. *Maui Contractors Association* Defendant.

June 16, 1987.
Civil No. 870466

Competitive Impact Statement

As required by Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), the United States files this Competitive Impact Statement on the proposed Final Judgment submitted for the Court's approval in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On June 16, 1987, the United States filed nine related civil antitrust compliants under Section 1 of the Sherman Act, 15 U.S.C. 1, against nine construction trade associations in Hawaii. Each complaint alleges that a trade association conspired with its members to restrain competition by adopting and enforcing certain rules that restrict bidding on construction projects in Hawaii. the United States and each of the nine defendants have agreed to Final Judgments in settlement of the cases. The Complaints and proposed Final Judgment in the nine cases are similar.

Defendant Maui Contractors Association ("MCA") is a Hawaii corporation with its principal place of business in Wailuku, Maui, Hawaii. MCA modeled its rules on the rules of the General Contractors Association ("GCA"), the first construction trade association in Hawaii to adopt bidding rules.

Plaintiff and defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless plaintiff withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to interpret, modify, enforce, and punish violations of the Final Judgment.

II

Description of the Practices Giving Rise to the Alleged Violation of the Antitrust Laws

A. The Bid Depository System in Hawai

A bid depository is a system for the collection and dissemination of bids or sub-bids for the performance of construction services. A bid depository collects and compiles bids submitted by a date certain and then disseminates them to bidding authorities or general contractors seeking the bids or sub-bids, respectively. By facilitating the bidding process, bid depositories can improve the efficiency of the contracting process and thereby promote rather than harm competition. The compliant in this case alleges, however, that the defendant adopted a number of rules governing the operation of its bid depository that restrained competition for subcontracts on construction projects governed by the MCA bidding procedure, by prohibiting and precluding negotiation of sub-bids once they were submitted to the bid depository.

On most major construction projects in Hawaii, including most government projects, the governmental and private entities that contract for construction services (known as "awarding authorities") do so by soliciting and accepting bids from general contractors. In preparing their respective bids, general contractors usually solicit and accept bids from the various specialty contractors (e.g., plumbing, electrical, masonry contractors) and material suppliers whose work will be needed on the project. A bid to a general contractor by a specialty contractor or material supplier to provide services or materials for a construction project is known in the trade as a "sub-bid."

Since 1949, GCA has maintained and enforced rules that regulate bidding by specialty contactors to general contractors on a substantial number of construction projects in Oahu, Hawaii. The rules, known collectively as the "GCA bidding procedure," govern the operation of GCA's bid depository. Two other general contractor associations in the State of Hawaii operate bid depositories: the Hawaii Island Contractors' Association (since 1972) and the Maui Contractors Association (since 1977).

Six speciality contractor associations operate bid depositories in conjunction with the three general contractor associations in Hawaii. These associations are: Gypsum Drywall Contractors of Hawaii, Mason Contractors Association of Hawaii, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii, Plumbing & Mechanical Contractors Association of Hawaii, and Sheet Metal Contractors Association. All of these bid depositories have rules similar to the MCA bidding procedure.

Under its rules GCA determines which construction projects will be subject to its bid depository rules. If GCA chooses a particular project, then pursuant to the rules of the other associations, that project is also subject to the depository rules of those other associations. Under the controlling GCA rules, the bid depository rules apply to all construction projects that are listed in the *GCA Weekly Bid Bulletin.* GCA selects the projects to be included in the *Bulletin* on its own and without the authorization or direction of the affected authorities. In fact, GCA selects almost exclusively government construction projects for inclusion in the *GCA Weekly Bid Bulletin* and seldom includes any private projects. All significant construction projects in Hawaii that are awarded by federal, state, or local governmental entities are listed in the *GCA Weekly Bid Bulletin.*

All significant general contractors operating on Maui are members of MCA and abide by the rules and procedures of MCA's bid depository with respect to construction projects on Maui that are listed in the *GCA Weekly Bid Bulletin*. The bidding rules are only suspended by MCA if non-Hawaiian general contractors who may be unwilling to abide by the procedures appear on the bidders list for a project. On construction projects to which the MCA bidding procedure applies, in almost all instances the only bids received by awarding authorities from general contractors are bids developed in accordance with that procedure.

Similarly, the membership of each of the six defendant specialty contractor associations includes all significant specialty contractors in each of the trades in Hawaii, and all association members abide by the rules and procedures of their association's bid depository. Thus, even if a general contractor were not a member of MCA and did not want to go through the bid depository procedures, it generally would be forced to agree to the procedures because, if it did not, the Hawaiian specialty contractors would be precluded by their rules from dealing with that general contractor. Hence, the general contractor would not be able to obtain an adequate number of sub-bids from qualified specialty contractors. Indeed, on construction projects to which the associations' bidding procedures apply, in almost all instances the only bids received by awarding authorities from general contractors are bids based on sub-bids submitted in accordance with those procedures. (In a small number of projects, non-Hawaiian general contractors bring in mainland subcontractors to work on Hawaiian projects).

The three general contractors and six specialty contractor associations are interrelated. Many specialty contractors are members of both their specialty trade association and a general contractor association. The general contractor associations have virtually identical bid procedures, and they cooperate with one another by transmitting or receiving bids from members of one depository for construction projects on an island under the jurisdiction of another. The six specialty contractor associations have bidding procedures modeled after the General Contractors Association's rules. The general and specialty contractor associations often cooperate in enforcing their bidding procedures.

B. The MCA Bidding Procedure

The Complaint filed against MCA alleges that MCA's bidding procedures provides, among other things, that:

1. Confirmation bids for all specialty subcontracts or material supplies must be filed with the MCA bid depository;

2. General contractors may award a specialty or material supply subcontract only to bidders who have formally filed bids with the MCA bid depository in compliance with its rules and procedures;

3. Filed bids may not be altered or changed after the deadline for their filing;

4. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

5. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository;

6. Prior to the prime bid opening, general contractors may not divulge any information to a specialty contractor or material supplier regarding any sub-bid received; and

7. If a construction project is altered in scope, the general contractor must continue to deal with the low filed bidders or parties he used in covering the affected item(s) of work.

The Complaint also alleges that beginning at least as early as 1977 and continuing to the present, the defendant engaged in a conspiracy consisting of an agreement, the substantial terms of which were to:

1. Assure that a substantial number of construction projects in the State of Hawaii would be governed by the MCA bidding procedure and other rules and procedures established by bid depositories operated by other associations of contractors in the State of Hawaii;

2. Restrain and prohibit the negotiation of sub-bids on construction projects governed by the MCA bidding procedure by, among other things, inhibiting the seeking of lower prices by general contractors or the offering of lower prices by specialty contractors or material suppliers; and

3. Restrain and prohibit the receipt of sub-bids from, or the award of subcontracts to, specialty contractors or material suppliers that do not comply with the MCA bidding procedure on construction projects governed by the MCA bidding procedure.

In addition, the Complaint alleges that the conspiracy had the following effects:

1. Competition among specialty contractors and material suppliers in the sale of specialty contracting services and materials to general contractors on construction projects governed by the MCA bidding procedure has been unreasonably restrained, suppressed, and eliminated; and

2. Competition among general contractors in negotiating sub-bids for specialty contracting services and materials for construction projects governed by the MCA bidding procedure has been unreasonably restrained, suppressed, and eliminated.

The regulation of negotiations between general contractors and subcontractors is not anticompetitive in all situations. Here, however, as explained above, the general contractor associations and the specialty contractor associations each possess market power for construction projects in Hawaii. In addition, the decision to limit negotiations between general contractors and specialty contractors was not the decision of the awarding authority, but rather was the decision of the general contractors acting in concert and the decision of the specialty contractors acting in concert. In this context we concluded that the association rules were anticompetitive because they unreasonably deprived the awarding authority of free and open competition in negotiations between general contractors and specialty contractors and material suppliers, for the performance of subcontracts on construction projects subject to the bidding procedures.

III

Explanation of the Proposed Final Judgment

The proposed Final Judgment enjoins MCA from continuing or renewing the anticompetitive conduct alleged in the Complaint. Specifically, Section IV prohibits MCA from maintaining, directly or indirectly, any written or unwritten rule that has the purpose or effect of:

1. Suppressing, restraining, or discouraging general contractors and specialty contractors or material suppliers from negotiating at any time sub-bids on construction projects;

2. Suppressing, restraining, or discouraging general contractors from receiving sub-bids from, or awarding subcontracts to, specialty contractors or material suppliers; or

3. Stating that negotiation of sub-bids is contrary to any policy of MCA.

Section V orders MCA to eliminate within 60 days all written and unwritten

rules that are inconsistent with the Final Judgment, including provisions in its bidding procedure which provide that:

1. Confirmation bids for all specialty subcontracts or material supplies must be filed with the MCA bid depository;

2. General contractors may award a specialty or material supply subcontract only to bidders who have formally filed bids with the MCA bid depository in compliance with its rules and procedures;

3. Filed bids may not be altered or changed after the deadline for their filing;

4. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

5. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository;

6. Prior to the prime bid opening, general contractors may not divulge any information to a specialty contractor or material supplier regarding any sub-bid received; and

7. If a construction project is altered in scope, the general contractor must continue to deal with the low filed bidders or parties he used in covering the affected item(s) of work.

Section V.B orders MCA to include in any MCA rules on bidding for contracts on construction projects a statement that no MCA policy prohibits negotiation of sub-bids, or requires that subcontracts be awarded only on sub-bids in accordance with MCA rules.

Section VI.A provides, however, that defendant is not enjoined from complying with any requirement of an awarding authority regarding the procedures general contractors must follow in obtaining sub-bids for the preparation of prime bids. This provision ensures that the proposed Final Judgment does not in any way limit awarding authorities' ability to establish bidding requirements for contractors. If the awarding authority decided that a regulated bidding system which prevented post-filing negotiations between contractors and subcontractors was appropriate, it could insist on it, and the contractors and subcontractors could comply without violating the decree.

Section VI.B further states that defendant is not enjoined from maintaining a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, so long as use of the services it provides is voluntary. This provision ensures that the proposed Final Judgment does not prohibit MCA from operating a bid depository so long as the services provided are voluntary and do not prohibit negotiations between general and specialty contractors.

Sections VII and VIII ensure that full notice of the requirements of the Final Judgment is given to all of MCA's officers, directors, managers, and members.

Section IX requires MCA to establish and implement a plan for monitoring compliance with the terms of the proposed Final Judgment. MCA is also required to file with the Court and the United States within ninety (90) days after date of entry of the Final Judgment, an affidavit explaining the steps it has taken to comply with the Final Judgment. MCA is required to file similar affidavits each year the Final Judgment is in effect.

Section XII makes the Final Judgment effective for ten (10) years from the date of its entry.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgment

The APPA provides that any person wishing to comment on the proposed Final Judgment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register.** Any person who believes that the proposed Final Judgment should be modified, may submit written comments within the statutory 60-day period to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, United States Department of Justice, 450 Golden Gate Avenue, 16th Floor, Box 36046, San Francisco, California 94102 (Telephone: 415/556-6300). These comments and the Department's response to them will be filed with the Court and published in the **Federal Register.** All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. Further, Section XI provides that the Court retains jurisdiction over this action and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI

Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgment considered by the Antitrust Division was a full trial on the merits and on relief. The Division considers the proposed Final Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violations alleged in the Complaint.

The effect of the proposed Final Judgment should be to eliminate entirely the alleged restraints on competition that are set forth in the Complaint. In particular, under the proposed Final Judgment, general contractors and specialty contractors and material suppliers can no longer agree to limit negotiations on the terms of sub-bids with each other. General contractors will be able freely to consider bids from any and all capable specialty contractors and material suppliers. Price competition among general contractors and among specialty contractors and material suppliers will be facilitated, to the benefit of awarding authorities and, indirectly, to the benefit of federal and state taxpayers. The proposed Final Judgment adequately redresses all aspects of the government's Complaint in this case.

VII

Determinative Materials and Documents

The United States considered no materials or documents to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed pursuant to the APPA, 15 U.S.C. 16(b).

Dated:

Respectfully submitted,

Robert J. Staal,

Phillip H. Warren,

Howard J. Parker,

Attorneys, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, Telephone: 415/556-6300

[FR Doc. 87-15107 Filed 7-7-87; 8:45 am]

BILLING CODE 4410-01-M

United States v. Pacific Electrical Contractors Association; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment and Competitive Impact Statement ("CIS") have been filed with the United States District Court for the District of Hawaii in *United States v. Pacific Electrical Contractors Association.* The Complaint in this case alleges that the Pacific Electrical Contractors Association unreasonably restrained competition by adopting and adhering to certain rules governing the submission of bids by specialty contractors to general contractors on a substantial number of construction projects in Hawaii.

The proposed Final Judgment requires the defendant to cancel all formal and informal rules that restrain negotiations between electrical contractors and general contractors or that restrain electrical contractors from offering bids to, or accepting subcontracts from, a general contractor on any project. It also requires elimination of rules that provide for notification of any electrical contractor of where its bid stands in relation to other bids prior to the time bids are due to general contractors.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses to them, will be published in the Federal Register and filed with the Court. Comments should be directed to Gary R. Spratling, Chief, San Francisco Field Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102 (telephone: 415/556-6300).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, (415) 556-6300, Attorneys for the United States.

Robert S. Katz, Torkildson, Katz, Jossem, Fonseca & Moore, Amfac Bldg., 15th Floor, 700 Bishop Street, Honolulu, Hawaii 96813, (808) 521-1051, Attorneys for Pacific Electrical Contractors Association.

U.S. District Court for the District of Hawaii

United States of America, Plaintiff v. *Pacific Electrical Contractors Association,* Defendant, Antitrust.

Filed: June 16, 1987.

Civil No. 870467ACK

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the Plaintiff:

Charles F. Rule,

Acting Assistant Attorney General.

Roger B. Andewelt,

Judy Whalley,

Gary R. Spratling,

Attorneys, Department of Justice.

Daniel A. Bent,

United States Attorney, District of Hawaii.

Robert J. Staal,

Phillip H. Warren,

Howard J. Parker,

Attorneys, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, Telephone: (415) 556-6300.

For the Defendants:

Robert S. Katz,

Counsel for Pacific Electrical Contractors Association.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, (415) 556-6300, Attorneys for the United States.

U.S. District Court for the District of Hawaii

United States of America, Plaintiff v. *Pacific Electrical Contractors Association,* Defendant, Antitrust.

Filed: June 16, 1987.

Civil No. 870467ACK

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on June 16, 1987, and plaintiff and defendant, by their respective attorneys, having consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against, or any admission by, any party with respect to any issue of fact or law herein;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

Ordered, Adjudged, and Decreed as follows:

I.

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II.

Definitions

As used in this Final Judgment:

A. "Awarding authority" means any governmental or private entity that contracts for the performance of construction projects;

B. "General contractor" means any person who contracts with awarding authorities for the performance of construction projects;

C. "Specialty contractor," also known as a subcontractor, means any person who supplies specialty contracting services (e.g., plumbing, electrical,

masonry) to general contractors for construction projects;

D. "Material supplier" means any person who supplies materials to general or specialty contractors for use on construction projects;

E. "Person" means any individual, partnership, firm, association, corporation, or other business or legal entity;

F. "Prime bid" means an offer to an awarding authority by a general contractor for the purpose of obtaining a contract for a construction project;

G. "Sub-bid" means an offer to a general contractor by a specialty contractor to supply specialty contracting services for a construction project, or by a material supplier to supply materials for a construction project;

H. "Confirmation bid" means written confirmation of a sub-bid, which confirmation is filed by a specialty contractor or material supplier with a bid depository; and

I. "Bid depository" means a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, or that receives confirmation bids filed by specialty contractors and material suppliers.

III.

This Final Judgment applies to the defendant Pacific Electrical Contractors Association ("PECA") and to each of its subsidiaries, successors, and assigns, and to each of its officers, directors, agents, managers and other employees, and to all other persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

Defendant is enjoined and restrained from directly or indirectly continuing, maintaining, initiating, adopting, ratifying, entering into, carrying out, furthering, disseminating, publishing, or enforcing any bidding procedure, plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement that has the purpose or effect of:

A. Suppressing, restraining, or discouraging general contractors and specialty contractors or material suppliers from negotiating at any time electrical sub-bids on construction projects;

B. Suppressing, restraining, or discouraging electrical contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project;

C. Stating that negotiation of sub-bids is contrary to any policy of PECA; or

D. Providing for review of electrical contractor and material supplier bids prior to the time bids are due to general contractors, or notification of any bidder of where its bid stands in relation to other bids.

V.

A. Defendant is ordered and directed to cancel and rescind within sixty (60) days of the date of entry of this Final Judgment, and is prohibited from directly or indirectly reinstating, every plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement that is inconsistent with this Final Judgment, including provisions in its bidding procedure which provide that:

1. Confirmation bids for electrical subcontracts or material supplies must be filed with the PECA bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are considerably lower than the other bids, such low bidders are so notified.

B. Defendant is ordered and directed to include in any PECA rules concerning bidding for contracts on construction projects a statement that no PECA rule or policy prohibits negotiation of sub-bids, or requires that subcontracts be accepted only on sub-bids filed in accordance with PECA rules.

VI.

Nothing in Sections IV and V of this Final Judgment shall prohibit defendant from:

A. Complying with any requirements of an awarding authority regarding the procedures general contractors must follow in obtaining sub-bids for the preparation of prime bids; or

B. Maintaining a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, so long as use of the facility by any contractor is voluntary.

VII.

Defendant is ordered and directed to:

A. Furnish a copy of this Final Judgment to each of its officers, directors, agents, and managers within thirty (30) days after the date of the entry of this Final Judgment;

B. Furnish a copy of this Final Judgment to any successors to its officers, directors, agents, and managers within thirty (30) days after each successor becomes associated with the defendant;

C. Obtain from each of its officers, directors, agents, and managers, and their successors, who have been furnished a copy of this Final Judgment, a signed receipt therefor, which receipt shall be retained in the defendant's files;

D. Attach to each copy of this Final Judgment furnished to its officers, directors, agents, and managers, and their successors, a statement, in the form set forth in Appendix A attached hereto, with the following sentence added to the letter: "Sections IV and V of the Final Judgment apply to you. If you violate these provisions, you may subject PECA to a fine, and you may also subject yourself to a fine and imprisonment."; and

E. Hold, within seventy-five (75) days after the date of entry of this Final Judgment, a meeting of its officers, directors, agents, and managers at which meeting such persons shall be instructed concerning the defendant's and their obligations under this Final Judgment. Similar meetings shall be held at least once a year during the term of this Final Judgment; provided, however, that no meeting must be held during any calendar year in which defendant has had no bidding procedure, plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement concerning any aspect of bidding for contracts on construction projects.

VIII.

Defendant is ordered and directed to:

A. Furnish a copy of this Final Judgment together with a letter on the letterhead of PECA, in the form set forth in Appendix A attached hereto, to each of its members within thirty (30) days after the date of the entry of this Final Judgment;

B. Furnish a copy of this Final Judgment together with a letter on the letterhead of PECA, in the form set forth

in Appendix A attached hereto, to each new member within thirty (30) days after the member joins PECA; and

C. Publish in the *GCA Weekly Bid Bulletin*, or in the event GCA ceases publication of it *Weekly Bid Bulletin* in a comparable construction trade publication, the notice attached hereto as Appendix B.

IX.

Defendant is ordered and directed to:

A. Establish and implement a plan for monitoring compliance by its officers, directors, agents, and managers and other employees with the terms of the Final Judgment;

B. File with this Court and serve upon the plaintiff, within ninety (90) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with this Final Judgment; and

C. File with this Court and serve upon the plaintiff annually on each anniversary date during the term of this Final Judgment an affidavit setting forth all steps it has taken during the preceding year to discharge its obligations under this Final Judgment.

X.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

1. Access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, agents, and managers and other employees of the defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c) (7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

XI.

Jurisdication is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XII.

This Final Judgment shall expire ten (10) years from its date of entry.

XIII.

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge.

Appendix A

Re: United States v. Pacific Electrical Contractors Association (Civil No. _____)

Dear Sir or Madam: The Pacific Electrical Contractors Association ("PECA") has recently entered into a Final Judgment with the United States Department of Justice to settle a civil antitrust case filed against the Association. That case, *United States* v. *Pacific Electrical Contractors Association* (Civil No. _____), concerned PECA's bidding procedure that governed a substantial number of electrical subcontracts on construction projects in the State of Hawaii. Our Association has been cooperating with the Department of Justice regarding this matter, and we have voluntarily agreed to the revisions of our bid depository rules outlined below. This Final Judgment does not constitute a finding or admission of wrongdoing.

Under the terms of the Final Judgment signed by Judge _____ of the District of Hawaii, PECA has agreed to eliminate all bid procedures or practices that in any manner may:

1. Restrict or discourage specialty contractors or material suppliers and general contractors from negotiating electrical sub-bids; or

2. Restrict of discourage electrical contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project.

Specifically, PECA has agreed to delete from its bidding procedure rules which provide that:

1. Confirmation bids for electrical subcontracts or material supplies must be filed with the PECA bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are considerably lower than the other bids, such low bidders are so notified.

The General Contractors Association of Hawaii, Hawaii Island Contractors Association, Gypsum Drywall Contractors of Hawaii, Maui Contractors Association, Mason Contractors Association of Hawaii, Painting & Decorating Contractors Association of Hawaii, Plumbing & Mechanical Contractors Association of Hawaii, and Sheet Metal Contractors Association have also recently settled civil antitrust cases and have agreed to eliminate provisions in their bidding procedures similar to the PECA rules being eliminated.

A copy of the entire Final Judgment is enclosed with this letter and will in the future be available upon request. I urge you to read it carefully.

Sincerely yours,

Appendix B

The Pacific Electrical Contractors Association ("PECA") has recently entered into a Final Judgment with the United States Department of Justice to settle an antitrust case filed against the Association. That case, *United States* v. *Pacific Electrical Contractors Association* (Civil No. _____), concerned the PECA's bidding procedure that governed a substantial number of electrical subcontracts on construction projects in the State of Hawaii. PECA has been cooperating with the Department of Justice regarding this matter, and has voluntarily agreed to the revisions of its bidding procedure outlined below. This Final Judgment does not constitute a finding or admission of wrongdoing.

Under the terms of the Final Judgment signed by Judge _____ of the District of Hawaii, PECA has agreed to eliminate all bid procedures or practices that in any manner may:

1. Restrict or discourage specialty contractors or material suppliers and general contractors from negotiating electrical sub-bids; or

2. Restrict or discourage electrical contractors or material supplies from offering sub-bids to, or accepting subcontracts from, a general contractor on any project.

Specifically, PECA has agreed to delete from its bidding procedure rules which provide that:

1. Confirmation bids for electrical contractors or material supplies must be filed with the PECA bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are considerably lower than the other bids, such low bidders are so notified.

The General Contractors Association of Hawaii, Hawaii Island Contractors Association, Gypsum Drywall Contractors of Hawaii, Maui Contractors Association, Mason Contractors Association of Hawaii, Painting & Decorating Contractors Association of Hawaii, Plumbing & Mechanical Contractors Association of Hawaii, and Sheet Metal Contractors Association have also recently settled civil antitrust cases and have agreed to eliminate provisions in their bidding procedures similar to the PECA rules being eliminated.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, 16th Floor, Box 36046, San Francisco, California 94102, Telephone: 415/556-6300, Attorneys for the United States.

United States District Court for the District of Hawaii

United States of America, Plaintiff, v. *Pacific Electrical Contractors, Association*, Defendant.

Filed: June 16, 1987.

Civil No. 870467 ACK

Competitive Impact Statement

As required by Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), the United States files this Competitive Impact Statement on the proposed Final Judgment submitted for the Court's approval in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On June 16, 1987, the United States filed nine related civil antitrust complaints under Section 1 of the Sherman Act, 15 U.S.C. 1, against nine construction trade associations in Hawaii. Each complaint alleges that a trade association conspired with its members to restrain competition by adopting and enforcing certain rules that restrict bidding on construction projects in Hawaii. The United States and each of the nine defendants have agreed to Final Judgments in settlement of the cases. The Complaints and proposal Final Judgments in the nine cases are similar.

Defendant Pacific Electrical Contractors Association of Hawaii ("PECA") is a Hawaii corporation with its principal place of business in Honolulu, Hawaii. PECA modeled its bidding rules on those of General Contractors Association ("GCA"), the first construction trade association in Hawaii to adopt bidding rules.

Plaintiff and defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless plaintiff withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to interpret, modify, enforce, and punish violations of the Final Judgment.

II

Description of the Practices Giving Rise to the Alleged Violation of the Antitrust Laws

A. The Bid Depository System in Hawaii

A bid depository is a system for the collection and dissemination of bids or sub-bids for the performance of construction services. A bid depository collects and compiles bids submitted by a date certain and then disseminates them to bidding authorities or general contractors seeking the bids or sub-bids, respectively. By facilitating the bidding process, bid depositories can improve the efficiency of the contracting process and thereby promote rather than harm competition. The complaint in this case alleges, however, that the defendant adopted a number of rules governing the operation of its bid depository that restrained competition for subcontracts or construction projects governed by the PECA bidding procedures, by prohibiting and precluding negotiation to sub-bids once they were submitted to the bid depository.

On most major construction projects in Hawaii, including most government projects, the governmental and private entities that contract for construction services (known as "awarding authorities") do so by soliciting and accepting bids from general contractors. In preparing their respective bids, general contractors usually solicit and accept bids from the various specialty contractors (e.g., plumbing, electrical, masonry contractors) and material suppliers whose work will be needed on the project. A bid to a general contractor by a specialty contractor or material supplier to provide services or materials for a construction project is known in the trade as a "sub-bid."

Since 1949, GCA has maintained and enforced rules that regulate bidding by specialty contractors to general contractors on a substantial number of construction projects in Oahu, Hawaii. The rules, known collectively as the "GCA bidding procedure," govern the operation of GCA's bid depository. Two other general contractor associations in the State of Hawaii operate bid depositories: the Hawaii Island Contractors' Association (since 1972) and the Maui Contractors Association (since 1977).

Six specialty contractor associations operate bid depositories in conjunction with the three general contractor associations in Hawaii. These associations are defendant PECA, Mason Contractors Association of Hawaii, Gypsum Drywall Contractors of Hawaii, Painting & Decorating Contractors Association of Hawaii, Plumbing & Mechanical Contractors Association of Hawaii, and Sheet Metal Contractors Association. All of these bid depositories have rules similar to the GCA bidding procedure.

Under its rules GCA determines which construction projects will be subject to its bid depository rules. If GCA chooses a particular project, then pursuant to the rules of the other associations, that project is also subject to the depository rules of those other associations. Under the controlling PECA rules, the PECA bid depository rules apply to all construction projects that are listed in the *GCA Weekly Bid Bulletin*. GCA selects the projects to be included in the *Bulletin* on its own and without the authorization or direction of the affected awarding authorities. In fact, GCA selects almost exclusively government construction projects for inclusion in the *GCA Weekly Bid Bulletin* and seldom includes any private projects. All significant construction projects in Hawaii that are awarded by federal, state, or local governmental entities are listed in the *GCA Weekly Bid Bulletin*.

All significant general contractors operating on the island of Oahu are members of GCA and abide by the bidding procedure for projects on Oahu that are listed in the *GCA Weekly Bid Bulletin*. The bidding rules are only suspended by GCA if non-Hawaiian general contractors who may be unwilling to abide by the procedures appear on the bidders list for a project. On construction projects to which the GCA bidding procedure applies, in almost all instances the only bids received by awarding authorities from general contractors are bids developed in accordance with that procedure.

Similarly, the membership of each of the six defendant specialty contractor associations includes all significant specialty contractors in each of the trades in Hawaii, and all association members abide by the rules and procedures of their association's bid depository. Thus, even if a general contractor were not a member of GCA and did not want to go through the bid depository procedures, it generally would be forced to agree to the procedures because, if it did not, the Hawaiian specialty contractors would be precluded by their rules from dealing with that general contractor. Hence, the general contractor would not be able to obtain an adequate number of sub-bids from qualified specialty contractors. Indeed, on construction projects to which the associations' bidding procedures apply, in almost all instances the only bids received by awarding authorities from general contractors are bids based on sub-bids submitted in accordance with those procedures. (In a small number of projects, non-Hawaiian general contractors bring in mainland subcontractors to work on Hawaiian projects.)

The three general contractor and six specialty contractor associations are interrelated. Many specialty contractors are members of both their specialty trade association and a general contractor association. The general contractor associations have virtually identical bid procedures, and they cooperate with one another by transmitting or receiving bids from members of one depository for construction projects on an island under the jurisdiction of another. The six specialty contractor associations have bidding procedures modeled after the GCA's rules. The general and specialty contractor associations often cooperate in enforcing their bidding procedures.

In addition, five of the six defendant specialty contractor associations have a rule not found in the general contractor association bidding procedures. This rule requires that any bidder whose bid is "considerably" lower than other bids shall be contacted by the bidder's association and requested to review its bid. (Of these five rules, only the Mason Contractors Association's rule specifies that a bidder shall be contacted if its bid is a certain percentage (10%) below most other bids.) After notification, the bidder is permitted to stand by the bid or withdraw it, but not change it. The rule also provides for tabulation and dissemination among specialty contractors of sub-bid prices after general contractors have opened bids.

B. The PECA Bidding Procedure

The Complaint filed against PECA alleges that PECA's bidding procedure provides, among other things, that:

1. Confirmation bids for electrical subcontracts or material supplies must be filed with the PECA bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are considerably lower than the others, such low bidders are so notified.

The Complaint also alleges that beginning at least as early as 1964 and continuing to the present, the defendant engaged in a conspiracy consisting of an agreement, the substantial terms of which were to:

1. Assure that a substantial number of construction projects in the State of Hawaii would be governed by the PECA bidding procedure and other rules and procedures established by bid depositories operated by other associations of contractors in the State of Hawaii;

2. Restrain and prohibit the negotiation of sub-bids on electrical subcontracts governed by the PECA bidding procedure by, among other things, inhibiting the seeking of lower prices by electrical contractors or material suppliers;

3. Restrain and prohibit the offering of sub-bids, or the acceptance of subcontracts, by electrical contractors or material suppliers that do not comply with the PECA bidding procedures; and

4. Review electrical contractor and material supplier bids prior to the time bids are due to general contractors and advise any bidders whose sub-bids are considerably lower than the others of that fact.

In addition, the Complaint alleges that the conspiracy had the following effects:

1. Competition among electrical contractors and material suppliers in the sale of electrical contracting services and materials to general contractors on construction projects governed by the PECA bidding procedure has been unreasonably restrained, suppressed, and eliminated; and

2. Competition among general contractors in negotiating sub-bids for electrical contracting services and materials for construction projects governed by the PECA bidding procedure has been unreasonably restrained, suppressed, and eliminated.

The regulation of negotiations between general contractors and subcontractors is not anticompetitive in all situations. Here, however, as explained above, the general contractor associations and the specialty contractor associations each possess

market power for construction projects in Hawaii. In addition, the decision to limit negotiations between general contractors and specialty contractors was not the decision of the awarding authority, but rather was the decision of the general contractors acting in concert and the decision of the specialty contractors acting in concert. In this context we concluded that the association rules were anticompetitive because they unreasonably deprived the awarding authority of free and open competition in negotiations between general contractors and specialty contractors and material suppliers, for the performance of subcontracts on construction projects subject to the bidding procedures.

The specialty contractor associations' rules requiring notification of bidders whose sub-bids are considerably lower than other bids are anticompetitive and result in increased prices for specialty contract work. The rules permit a bidder who has submitted an accurate bid to withdraw the bid simply because it is "too low." When the low bidder withdraws a bid after being notified as required by the association rules, the second lowest bidder wins the job with an increased profit margin.

The only purported justification for these rules is that notifying low bidders that they are significantly lower prevents the award of a bid to a specialty contractor who made a mistake in calculating its bid, and who, in performing the job at the mistaken bid price, may go bankrupt, leaving the general contractor and the project owner with an unfinished job. This justification fails on two points. First, it appears that specialty contractors have regularly withdrawn bids that contain no mistake (other than being too low). Second, the justification advanced is a concern of the general contractors that, to the extent it exists, can and should be addressed by the general contractors who have a strong incentive to ensure that a specialty contractor is able to complete its job. General contractors routinely screen low bids for errors. Thus it is unnecessary for competitors to screen each other's bids to address this concern.

III

Explanation of the Proposed Final Judgment

The proposed Final Judgment enjoins PECA from continuing or renewing the anticompetitive conduct alleged in the Complaint. Specifically, Section IV prohibits PECA from maintaining, directly or indirectly, any written or unwritten rule that has the purpose or effect of:

A. Suppressing, restraining, or discouraging general contractors and specialty contractors or material suppliers from negotiating at any time electrical sub-bids on construction projects;

B. Suppressing, restraining, or discouraging electrical contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project;

C. Stating that negotiation of sub-bids is contrary to any policy of PECA; or

D. Providing for review of electrical contractor and material supplier bids prior to the time bids are due to general contractors, or notification of any bidder of where its bid stands in relation to other bids.

Section V orders PECA to eliminate within 60 days all written and unwritten rule, that are inconsistent with the Final Judgment, including provisions in its bidding procedure which provide that:

1. Confirmation bids for electrical subcontracts or material supplies must be filed with the PECA bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are considerably lower than the other bids, such low bidders are so notified.

Section V.B orders PECA to include in any PECA rules on bidding for contracts on construction projects a statement that no PECA policy prohibits negotiation of sub-bids, or requires that subcontracts be awarded only on sub-bids filed in accordance with PECA rules.

Section VI.A provides, however, that defendant is not enjoined from complying with any requirement of an awarding authority regarding the procedures general contractors must follow in obtaining sub-bids for the preparation of prime bids. This provision ensures that the proposed Final Judgment does not in any way limit awarding authorities' ability to establish bidding requirements for contractors. If the awarding authority decided that a regulated bidding system which prevented post-filing negotiations between contractors and subcontractors was appropriate, it could insist on it, and the contractors and subcontractors could comply without violating the decree.

Section VI.B further states that defendant is not enjoined from maintaining a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, so long as use of the services it provides is voluntary. This provision ensures that the proposed Final Judgment does not prohibit PECA from operating a bid depository so long as the services provided are voluntary and do not prohibit negotiations between general and specialty contractors.

Sections VII and VIII ensure that full notice of the requirements of the Final Judgment is given to all of PECA's officers, directors, managers, and members.

Section IX requires PECA to establish and implement a plan for monitoring compliance with the terms of the proposed Final Judgment. PECA is also required to file with the Court and the United States within ninety (90) days after date of entry of the Final Judgment, an affidavit explaining the steps it has taken to comply with the Final Judgment. PECA is required to file similar affidavits each year the Final Judgment is in effect.

Section XII makes the Final Judgment effective for ten (10) years from the date of its entry.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgment

The APPA provides that any person wishing to comment on the proposed

Final Judgment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. Any person who believes that the proposed Final Judgment should be modified, may submit written comments within the statutory 60-day period to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, United States Department of Justice, 450 Golden Gate Avenue, 16th Floor, Box 36046, San Francisco, California 94102 (Telephone: 415/556–6300). These comments and the Department's response to them will be filed with the Court and published in the **Federal Register.** All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. Further, Section XI provides that the Court retains jurisdiction over this action and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI

Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgment considered by the Antitrust Division was a full trial on the merits and on relief. The Division considers the proposed Final Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violations alleged in the Complaint.

The effect of the proposed Final Judgment should be to eliminate entirely the alleged restraints on competition that are set forth in the Complaint. In particular, under the proposed Final Judgment, general contractors and specialty contractors and material suppliers can no longer agree to limit negotiations on the terms of sub-bids with each other. General contractors will be able freely to consider bids from any and all capable specialty contractors and material suppliers. Moreover, specialty contractors will be prohibited from notifying bidders whose bids are considerably lower than the next lower bids. In sum, price competition among general contractors and among specialty contractors and material suppliers will be facilitated, to the benefit of awarding authorities and, indirectly, to the benefit of federal and state taxpayers. The proposed Final Judgment adequately redresses all aspects of the government's Complaint in this case.

The Division also considered including in the proposed Final Judgment an injunction against the specialty contractor associations' practice of tabulating and disseminating the prices contained in bids submitted to their depositories. such exchanges of price information can be procompetitive in that, by providing firms with information about competitors, they ultimately can help firms identify ways in which to lower their costs. But in some circumstances where a market is otherwise prone to collusion, such exchanges of price information can be used to police pricing agreements and can have an anticompetitive effect. The Division chose not to improve an injunction against such information exchange in this case because it cannot be predicted that an exchange of information, on balance, would be anticompetitive in this market after entry of the proposed Final Judgment with its injunctions against anticompetitive practices by the depositories. The Division concluded that such an injunction is not now necessary to restore full and vigorous competition to the affected markets.

VII

Determinative Materials and Documents

The United States considered no materials or documents to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed pursuant to the APPA, 15 U.S.C. 16(b).

Dated:

Respectfully submitted,

Robert J. Staal,

Phillip H. Warren,

Howard J. Parker,

Attorneys, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94101, Telephone 415/556–6300.

[FR Doc. 87–15109 Filed 7–7–87; 8:45 am]

BILLING CODE 4410–01–M

United States v. Painting & Decorating Contractor Association of Hawaii; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and Competitive Impact Statement ("CIS") have been filed with the United States District Court for the District of Hawaii in *United States v. Painting & Decorating Contractor Association of Hawaii.* The Complaint in this case alleges that the Painting & Decorating Contractor Association of Hawaii unreasonably restrained competition by adopting and adhering to certain rules governing the submission of bids by specialty contractors to general contractors on a substantial number of construction projects in Hawaii.

The proposed Final Judgment requires the defendant to cancel all formal and informal rules that restrain negotiations between general contractors and painting or decorating contractors or that restrain specialty contractors from offering bids to, or accepting subcontracts from, a general contractor on any project. It also requires elimination of rules that provide for notification of any painting or decorating contractor of where its bid stands in relation to other bids prior to the time bids are are due to general contractors.

Public comment is invited with the statutory 60-day comment period. Such comments, and responses to them, will be published in the Federal Register and filed with the Court. Comments should be directed to Gary R. Spratling, Chief, San Francisco Field Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102 (telephone: 415/556–6300).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, (415) 556–6300, Attorneys for the United States.

Robert F. Miller, Miller & Ichinose, Suite 800—H.K. Building, 820 Mililani, Honolulu, Hawaii 96813, (808) 533–6111, Attorneys for Painting & Decorating Contractors Association of Hawaii.

U.S. District Court for the District of Hawaii

United States of America, Plaintiff v. Painting & Decorating Contractors Association of Hawaii, Defendant, Antitrust.

Filed June 16, 1987.

Civil No. 870468ACK.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon

the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the Plaintiff:

Charles F. Rule,
Acting Assistant Attorney General.

Roger B. Andewelt,
Judy Whalley,
Gary R. Spratling,
Attorneys, Department of Justice.

Daniel A. Bent,
United States Attorney, District of Hawaii.

Robert J. Staal,

Phillip H. Warren,

Howard J. Parker,
Attorneys, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, Telephone: (415) 556-6300.

For the Defendants:

Robert F. Miller,
Counsel for Painting & Decorating Contractors Association of Hawaii.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, (415) 556-6300, Attorneys for the United States.

United States District Court for the District of Hawaii

United States of America, Plaintiff v. *Painting & Decorating Contractors Association of Hawaii,* Defendant.

Filed: June 16, 1987.

Civil No. 870468ACK

Antitrust.

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on June 16, 1987, and plaintiff and defendant, by their respective attorneys, having consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against, or any admission by, any party with respect to any issue of fact or law herein;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. 1).

II.

Definitions

As used in this Final Judgment:

A. "Awarding authority" means any government or private entity that contracts for the performance of construction projects;

B. "General contractor" means any person who contracts with awarding authorities for the performance of construction projects;

C. "Specialty contractor," also known as a subcontractor, means any person who supplies specialty contracting services (e.g., plumbing, electrical, masonry) to general contractors for construction projects;

D. "Material supplier" means any person who supplies materials to general or specialty contractors for use on construction projects;

E. "Person" means any individual, partnership, firm, association, corporation, or other business or legal entity;

F. "Prime bid" means an offer to an awarding authority by a general contractor for the purpose of obtaining a contract for a construction project;

G. "Sub-bid" means an offer to a general contractor by a specialty contractor to supply specialty contracting services for a construction project, or by a material supplier to supply materials for a construction project;

H. "Confirmation bid" means written confirmation of a sub-bid, which confirmation is filed by a specialty contractor or material supplier with a bid depository; and

I. "Bid depository" means a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, or that receives confirmation bids filed by specialty contractors and material suppliers.

III.

This Final Judgment applies to the defendant Painting & Decorating Contractors Association of Hawaii ("PDCA") and to each of its subsidiaries, successors, and assigns, and to each of its officers, directors, agents, managers and other employees, and to all other persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

Defendant is enjoined and restrained from directly or indirectly continuing, maintaining, initiating, adopting, ratifying, entering into, carrying out, furthering, disseminating, publishing, or enforcing any bidding procedure, plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement that has the purpose or effect of:

A. Suppressing, restraining, or discouraging general contractors and specialty contractors or material suppliers from negotiating at any time painting and decorating sub-bids on construction projects;

B. Suppressing, restraining, or discouraging painting and decorating contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project;

C. Stating that negotiation of sub-bids is contrary to any policy of PDCA; or

D. Providing for review of painting and decorating contractor and material supplier bids prior to the time bids are due to general contractors, or notification of any bidder of where its bid stands in relation to other bids.

V.

A. Defendant is ordered and directed to cancel and rescind within sixty (60) days of the date of this Final Judgment, and is prohibited from directly or indirectly reinstating, every plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement

that is inconsistent with this Final Judgment, including provisions in its bidding procedure which provide that:

1. Confirmation bids for painting and decorating subcontracts or material supplies must be filed with the PDCA bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor; and

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository.

B. Defendant is ordered and directed to include in any PDCA rules concerning bidding for contracts on construction projects a statement that no PDCA rule or policy prohibits negotiation of sub-bids, or requires that subcontracts be accepted only on sub-bids filed in accordance with PDCA rules.

VI.

Nothing in Sections IV and V of this Final Judgment shall prohibit defendant from:

A. Complying with any requirements of an awarding authority regarding the procedures general contractors must follow in obtaining sub-bids for the preparation of prime bids; or

B. Maintaining a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, so long as use of the facility by any contractor is voluntary.

VII.

Defendant is ordered and directed to:

A. Furnish a copy of this Final Judgment to each of its officers, directors, agents, and managers within thirty (30) days after the date of the entry of this Final Judgment;

B. Furnish a copy of this Final Judgment to any successors to its officers, directors, agents, and managers within thirty (30) days after each successor becomes associated with the defendant;

C. Obtain from each of its officers, directors, agents, and managers, and their successors, who have been furnished a copy of this Final Judgment, a signed receipt therefor, which receipt shall be retained in the defendant's files;

D. Attach to each copy of this Final Judgment furnished to its officers, directors, agents, and managers, and their successors, a statement, in the form set forth in Appendix A attached hereto, with the following sentence added to the letter: "Sections IV and V of the Final Judgment apply to you. If you violate these provisions, you may subject PDCA to a fine, and you may also subject yourself to a fine and imprisonment."; and

E. Hold, within seventy-five (75) days after the date of entry of this Final Judgment, a meeting of its officers, directors, agents, and managers at which meeting such persons shall be instructed concerning the defendant's and their obligations under this Final Judgment. Similar meetings shall be held at least once a year during the term of this Final Judgment; provided, however, that no meeting must be held during any calendar year in which defendant has had no bidding procedure, plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement concerning any aspect of bidding for contracts on construction projects.

VIII.

Defendant is ordered and directed to:

A. Furnish a copy of this Final Judgment together with a letter on the letterhead of PDCA, in the form set forth in Appendix A attached hereto, to each of its members within thirty (30) days after the date of entry of this Final Judgment;

B. Furnish a copy of this Final Judgment together with a letter on the letterhead of PDCA, in the form set forth in Appendix A attached hereto, to each new member within thirty (30) days after the member joins PDCA; and

C. Publish in the *GCA Weekly Bid Bulletin,* or in the event GCA ceases publication of its *Weekly Bid Bulletin* in a comparable construction trade publication, the notice attached hereto as Appendix B.

IX.

Defendant is ordered and directed to:

A. Establish and implement a plan for monitoring compliance by its officers, directors, agents, and managers and other employees with the terms of the Final Judgment;

B. File with this Court and serve upon the plaintiff, within ninety (90) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with this Final Judgment; and

C. File with this Court and serve upon the plaintiff annually on each anniversary date during the term of this Final Judgment an affidavit setting forth all steps it has taken during the preceding year to discharge its obligations under this Final Judgment.

X.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, the permitted:

1. Access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, agents, and managers and other employees of the defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purposes of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other

than a grand jury proceeding) to which the defendant is not a party.

XI.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XII.

This Final Judgment shall expire ten (10) years from its date of entry.

Entry of this Final Judgment is in the public interest.

Dated: _____

United States District Judge.

Appendix A

Re: *United States* v. *Painting & Decorating Contractors Association of Hawaii* (Civil No. _____)

Dear Sir or Madam:

The Painting & Decorating Contractors Association of Hawaii ("PDCA) has recently entered into a Final Judgment with the United States Department of Justice to settle a civil antitrust case filed against the Association. That case, *United States* v. *Painting & Decorating Contractors Association of Hawaii* (Civil No. _____), concerned PDCA's bidding procedure that governed a substantial number of painting and decorating subcontracts or construction projects in the State of Hawaii. Our Association has been cooperating with the Department of Justice regarding this matter, and we have voluntarily agreed to the revisions of our bid depository rules outlined below. This Final Judgment does not constitute a finding or admission of wrongdoing.

Under the terms of the Final Judgment signed by Judge _____ of the District of Hawaii, PDCA has agreed to eliminate all bid procedures or practices that in any manner may:

1. Restrict or discourage specialty contractors or material suppliers and general contractors from negotiating painting and decorating sub-bids; or

2. Restrict or discourage painting and decorating contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project.

Specifically, PDCA has agreed to delete from its bidding procedure rules which provide that:

1. Confirmation bids from painting and decorating subcontracts or material supplies must be filed with the PDCA bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor; and

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository.

The General Contractors Association of Hawaii, Hawaii Island Contractors Association, Gypsum Drywall Contractors of Hawaii, Maui Contractors Association, Mason Contractors Association of Hawaii, Pacific Electrical Contractors Association, Plumbing & Mechanical Contractors Association of Hawaii, and Sheet Metal Contractors Association have also recently settled civil antitrust cases and have agreed to eliminate provisions in their bidding procedures similar to the PDCA rules being eliminated.

A copy of the entire Final Judgment is enclosed with this letter and will in the future be available upon request. I urge you to read it carefully.

Sincerely yours,

Appendix B

The Painting & Decorating contractors Association of Hawaii ("PDCA") has recently entered into a final Judgment with the United States Department of Justice to settle an antitrust case filed against the Association. That case, *United States* v. *Painting & Decorating Contractors Association of Hawaii* (Civil No. _____), concerned the PDCA's bidding procedure that governed a substantial number of painting and decorating subcontracts on constuction projects in the State of Hawaii. PDCA has been cooperating with the Department of Justice regarding this matter, and has voluntarily agreed to the revisions of its bidding procedure outlined below. This Final Judgment does not constitute a finding or admission or wrongdoing.

Under the terms of the final Judgment signed by Judge _____ of the District of Hawaii, PDCA has agreed to eliminate all bid procedures or practices that in any manner may:

1. Restrict or discourage painting and decorating specialty contractors or material suppliers and general contractors from negotiating sub-bids; or

2. Restrict or discourage painting and decorating contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project.

Specifically, PDCA has agreed to delete from its bidding procedure rules which provide that:

1. Confirmation bids for painting and decorating subcontracts or material supplies must be filed with the PDCA bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor; and

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository.

The General Contractors Association of Hawaii, Hawaii Island Contractors Association, Gypsum Drywall Contractors of Hawaii, Maui Contractors Association, Mason Contractors Association of Hawaii, Pacific Electrical Contractors association, Plumbing & Mechanical Contractors Association of Hawaii, and Sheet Metal Contractors Association have also recently settled civil antitrust cases and have agreed to eliminate provisions in their bidding procedures similar to the PDCA rules being eliminated.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, 16th Floor, Box 36046, San Francisco, California 94102, Telephone: 415/556-6300, Attorneys for the United States.

U.S. District Court for the District of Hawaii

United States of America, Plaintiff v. *Painting & Decorating Contractors Association*, Defendant.

Civil No. 870468ACK.

Filed: June 16, 1987.

Competitive Impact Statement

As required by Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), the United States files this Competitive Impact Statement on the proposed Final Judgment submitted for the Court's

approval in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On June 16, 1987, the United States filed nine related civil antitrust complaints under Section 1 of the Sherman Act, 15 U.S.C. 1, against nine construction trade associations in Hawaii. Each complaint alleges that a trade association conspired with its members to restrain competition by adopting and enforcing certain rules that restrict bidding on construction projects in Hawaii. The United States and each of the nine defendants have agreed to Final Judgments in settlement of the cases. The Complaints and proposed Final Judgments in the nine cases are similar.

Defendant Painting & Decorating Contractors Association of Hawaii ("PDCA") is a Hawaii corporation with its principal place of business in Honolulu, Hawaii. PDCA modeled its bidding rules on those of General Contractors Association ("GCA"), the first construction trade association in Hawaii to adopt bidding rules.

Plaintiff and defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless plaintiff withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to interpret, modify, enforce, and punish violations of the Final Judgment.

II

Description of the Practices Giving Rise to the Alleged Violation of the Antitrust Laws

A. The Bid Depository System in Hawaii

A bid depository is a system for the collection and dissemination of bids or sub-bids for the performance of construction services. A bid depository collects and compiles bids submitted by a date certain and then disseminates them to bidding authorities or general contractors seeking the bids or sub-bids, respectively. By facilitating the bidding process, bid depositories can improve the efficiency of the contracting process and thereby promote rather than harm competition. The complaint in this case alleges, however, that the defendant adopted a number of rules governing the operation of its bid depository that restrained competition for subcontracts on construction projects governed by the PDCA bidding procedures, by prohibiting and precluding negotiation of sub-bids once they were submitted to the bid depository.

On most major construction projects in Hawaii, including most government projects, the governmental and private entities that contract for construction services (known as "awarding authorities") do so by soliciting and accepting bids from general contractors. In preparing their respective bids, general contractors usually solicit and accept bids from the various specialty contractors (e.g., plumbing, electrical, masonry contractors) and material suppliers whose work will be needed on the project. A bid to a general contractor by a specialty contractor or material supplier to provide services or materials for a construction project is known in the trade as a "sub-bid."

Since 1949, GCA has maintained and enforced rules that regulate bidding by specialty contractors to general contractors on a substantial number of construction projects in Oahu, Hawaii. The rules, known collectively as the "GCA bidding procedure," govern the operation of GCA's bid depository. Two other general contractor associations in the State of Hawaii operate bid depositorites: the Hawaii Island Contractors' Association (since 1972) and the Maui Contractors Association (since 1977).

Six specialty contractor associations operate bid depositories in conjunction with the three general contractor associations in Hawaii. These associations are defendant PDCA, Gypsum Drywall Contractors of Hawaii, Mason Contractors Association of Hawaii, Pacific Electrical Contractors Association, Plumbing & Mechanical Contractors Association of Hawaii, and Sheet Metal Contractors Association. All of these bid depositories have rules similar to the GCA bidding procedure.

Under its rules GCA determines which construction projects will be subject to its bid depository rules. If GCA chooses a particular project, then pursuant to the rules of the other associations, that project is also subject to the depository rules of those other associations. Under the controlling PDCA rules, the PDCA bid depository rules apply to all construction projects that are listed in the *GCA Weekly Bid Bulletin*. GCA selects the projects to be included in the *Bulletin* on its own and without the authorization or direction of the affected awarding authorities. In fact, GCA selects almost exclusively government construction projects for inclusion in the *GCA Weekly Bid Bulletin* and seldom includes any private projects. All significant construction projects in Hawaii that are awarded by federal, state, or local governmental entities are listed in the *GCA Weekly Bid Bulletin*.

All significant general contractors operating on the island of Oahu are members of GCA and abide by the bidding procedure for projects on Oahu that are listed in the *GCA Weekly Bid Bulletin*. The bidding rules are only suspended by GCA if non-Hawaiian general contractors who may be unwilling to abide by the procedures appear on the bidders list for a project. On construction projects to which the GCA bidding procedure applies, in almost all instances the only bids received by awarding authorities from general contractors are bids developed in accordance with that procedure.

Similarly, the membership of each of the six defendant specialty contractor associations includes all significant specialty contractors in each of the trades in Hawaii, and all association members abide by the rules and procedures of their association's bid depository. Thus, even if a general contractor were not a member of GCA and did not want to go through the bid depository procedures, it generally would be forced to agree to the procedures because, if it did not, the Hawaiian specialty contractors would be precluded by their rules from dealing with that general contractor. Hence, the general contractor would not be able to obtain an adequate number of sub-bids from qualified specialty contractors. Indeed, on construction projects to which the associations' bidding procedures apply, in almost all instances the only bids received by awarding authorities from general contractors are bids based on sub-bids submitted in accordance with those procedures. (In a small number of projects, non-Hawaiian general contractors bring in mainland subcontractors to work on Hawaiian projects.)

The three general contractor and six specialty contractor associations are interrelated. Many specialty contractors are members of both their specialty trade association and a general contractor association. The general contractor associations have virtually identical bid procedures, and they cooperate with one another by transmitting or receiving bids from members of one depository for construction projects on an island under the jurisdiction of another. The six specialty contractor associations have bidding procedures modeled after the GCA's rules. The general and specialty contractor associations often cooperate in enforcing their bidding procedures.

In addition, five of the six defendant specialty contractor associations have a rule not found in the general contractor association bidding procedures. This rule requires that any bidder whose bid is "considerably" lower than other bids shall be contacted by the bidder's association and requested to review its bid. (Of these five rules, only the Mason Contractors Association's rule specifies that a bidder shall be contacted if its bid is a certain percentage (10%) below most other bids.) After notification, the bidder is permitted to stand by the bid or withdraw it, but not change it. The rule also provides for tabulation and dissemination among specialty contractors of sub-bid prices after general contractors have opened bids.

B. The PDCA Bidding Procedure

The Complaint filed against PDCA alleges that PDCA's bidding procedure provides, among other things, that:

1. Confirmation bids for painting and decorating subcontracts or material supplies must be filed with the PDCA bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor; and

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository.

The Complaint also alleges that beginning at least as early as 1963 and continuing to the present, the defendant engaged in a conspiracy consisting of an agreement, the substantial terms of which were to:

1. Assure that a substantial number of construction projects in the State of Hawaii would be governed by the PDCA bidding procedure and other rules and procedures established by bid depositories operated by other associations of contractors in the State of Hawaii;

2. Restrain and prohibit the negotiation of sub-bids on painting and decorating subcontracts governed by the PDCA bidding procedure by, among other things, inhibiting the seeking of lower prices by general contractors or the offering of lower prices by painting and decorating contractors or material suppliers; and

3. Restrain and prohibit the offering of sub-bids, or the acceptance of subcontracts, by painting and decorating contractors or material suppliers that do not comply with the PDCA bidding procedures.

In addition, the Complaint alleges that the conspiracy had the following effects:

1. Competition among painting and decorating contractors and material suppliers in the sale of painting and decorating contracting services and materials to general contractors on construction projects governed by the PDCA bidding procedure has been unreasonably restrained, suppressed, and eliminated; and

2. Competition among general contractors in negotiating sub-bids for painting and decorating contracting services and materials for construction projects governed by the PDCA bidding procedure has been unreasonably restrained, suppressed, and eliminated.

The regulation of negotiations between general contractors and subcontractors is not anticompetitive in all situations. Here, however, as explained above, the general contractor associations and the specialty contractor associations each possess market power for construction projects in Hawaii. In addition, the decision to limit negotiations between general contractors and specialty contractors was not the decision of the awarding authority, but rather was the decision of the general contractors acting in concert and the decision of the specialty contractors acting in concert. In this context we concluded that the association rules were anticompetitive because they unreasonably deprived the awarding authority of free and open competition in negotiations between general contractors and specialty contractors and material suppliers, for the performance of subcontracts on construction projects subject to the bidding procedures.

The specialty contractor associations' rules requiring notification of bidders whose sub-bids are considerably lower than other bids are anticompetitive and result in increased prices for specialty contract work. The rules permit a bidder who has submitted an accurate bid to withdraw the bid simply because it is "too low." When the low bidder withdraws a bid after being notified as required by the association rules, the second lowest bidder wins the job with an increased profit margin.

The only purported justification for these rules is that notifying low bidders that they are significantly lower prevents the award of a bid to a specialty contractor who made a mistake in calculating its bid, and who, in performing the job at the mistaken bid price, may go bankrupt, leaving the general contractor and the project owner with an unfinished job. This justification fails on two points. First, it appears that specialty contractors have regularly withdrawn bids that contain no mistake (other than being too low). Second, the jusitification advanced is a concern of the general contractors that, to the extent it exists, can and should be addressed by the general contractors who have a strong incentive to ensure that a specialty contractor is able to complete its job. General contractors routinely screen low bids for errors. Thus it is unnecessary for competitors to screen each other's bids to address this concern.

III

Explanation of the Proposed Final Judgment

The proposed Final Judgment enjoins PDCA from continuing or renewing the anticompetitive conduct alleged in the Complaint. Specifically, Section IV prohibits PDCA from maintaining, directly or indirectly, any written or unwritten rule that has the purpose or effect of:

1. Suppressing, restraining, or discouraging general contractors and specialty contractors or material suppliers from negotiating at any time painting and decorating sub-bids on construction projects;

2. Suppressing, restraining, or discouraging painting and decorating contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project;

3. Stating that negotiation of sub-bids is contrary to any policy of PDCA; or

4. Providing for review of painting and decorating contractor and material supplier bids prior to the time bids are due to general contractors, or notification of any bidder of where its bid stands in relation to other bids.

Section V orders PDCA to eliminate within 60 days all written and unwritten rules that are inconsistent with the Final Judgment, including provisions in its bidding procedure which provide that:

1. Confirmation bids for painting and decorating subcontracts or material supplies must be filed with the PDCA bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor; and

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository.

Section V.B orders PDCA to include in any PDCA rules on bidding for contracts on construction projects a statement that no PDCA policy prohibits negotiation of sub-bids, or requires that subcontracts be awarded only on sub-bids filed in accordance with PDCA rules.

Section VI.A provides, however, that defendant is not enjoined from complying with any requirement of an awarding authority regarding the procedures general contractors must follow in obtaining sub-bids for the preparation of prime bids. This provision ensures that the proposed Final Judgment does not in any way limit awarding authorities' ability to establish bidding requirements for contractors. If the awarding authority decided that a regulated bidding system which prevented post-filing negotiations between contractors and subcontractors was appropriate, it could insist on it, and the contractors and subcontractors could comply without violating the decree.

Section VI.B further states that defendant is not enjoined from maintaining a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, so long as use of the services it provides is voluntary. This provision ensures that the proposed Final Judgment does not prohibit PDCA from operating a bid depository so long as the services provided are voluntary and do not prohibit negotiations between general and specialty contractors.

Sections VII and VIII ensure that full notice of the requirements of the Final Judgment is given to all of PDCA's officers, directors, managers, and members.

Section IX requires PDCA to establish and implement a plan for monitoring compliance with the terms of the proposed Final Judgment. PDCA is also required to file with the Court and the United States within ninety (90) days after date of entry of the Final Judgment, an affidavit explaining the steps it has taken to comply with the Final Judgment. PDCA is required to file similar affidavits each year the Final Judgment is in effect.

Section XII makes the Final Judgment effective for ten (10) years frm the date of its entry.

IV

Remedies available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgment

The APPA provides that any person wishing to comment on the proposed Final Judgment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register.** Any person who believes that the proposed Final Judgment should be modified, may submit written comments within the statutory 60-day period to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, United States Department of Justice, 450 Golden Gate Avenue, 16th Floor, Box 36046, San Francisco, California 94102 (Telephone: 415/556-6300). These comments and the Department's response to them will be filed with the Court and published in the **Federal Register.** All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. Further, Section XI provides that the Court retains jurisdiction over this action and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI

Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgment considered by the Antitrust Division was a fill trial on the merits and on relief. The Division considers the proposed Final Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violations alleged in the Complaint.

The effect of the proposed Final Judgment should be to eliminate entirely the alleged restraints on competition that are set forth in the Complaint. In particular, under the proposed Final Judgment, general contractors and specialty contractors and material suppliers can no longer agree to limit negotiations on the terms of sub-bids with each other. General contractors will be able freely to consider bids from any and all capable specialty contractors and material suppliers. Moreover, specialty contractors will be prohibited from notifying bidders whose bids are considerably lower than the next lower bids. In sum, price competition among general contractors and among specialty contractors and material suppliers will be facilitated, to the benefit of awarding authorities and, indirectly, to the benefit of federal and state taxpayers. The proposed Final Judgment adequately redresses all aspects of the government's Complaint in this case.

The Division also considered including in the proposed Final Judgment an injunction against the specialty contractor associations' practice of tabulating and disseminating the prices contained in bids submitted to their depositories. Such exchanges of price information can be procompetitive in that, by providing firms with information about competitors, they ultimately can help firms identify ways in which to lower their costs. But in some circumstances where a market is otherwise prone to collusion, such exchanges of price information can be used to police pricing agreements and can have an anticompetitive effect. The Division chose not to impose an injunction against such information exchange in this case because it cannot be predicted that an exchange of information, on balance, would be anticompetitive in this market after entry of the proposed Final Judgment with its injunctions against anticompetitive practices by the depositories. The Division concluded that such an injunction is not now necessary to restore full and vigorous competition to the affected markets.

VII

Determinative Materials and Documents

The United States considered no materials or documents to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed pursuant to the APPA, 15 U.S.C. 16(b).

Dated:

Respectfully submitted,

Robert J. Staal,

Phillip H. Warren,

Howard J. Parker,

Attorneys, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California, 94102, Telephone: 415/556-6300.

[FR Doc. 87-15108 Filed 7-7-87; 8:45 am]

BILLING CODE 4410-01-M

United States v. Plumbing & Mechanical Contractors of Hawaii; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment and Competitive Impact Statement ("CIS") have been filed with the United States District Court for the District of Hawaii in *United States* v. *Plumbing & Mechanical Contractors of Hawaii.* The Complaint in this case alleges that the Plumbing & Mechanical Contractors of Hawaii unreasonably restrained competition by adopting and adhering to certain rules governing the submission of bids by specialty contractors to general contractors on a substantial number of construction projects in Hawaii.

The proposed Final Judgment requires the defendant to cancel all formal and informal rules that restrain negotiations between plumbing and mechanical contractors and general contractors or that restrain plumbing and mechanical contractors from offering bids to, or accepting subcontrators from, a general contractor on any project. It also requires elimination of rules that provide for notification of any plumbing or mechanical contractor of where its bid stands in relation to other bids prior to the time bids are due to general contractors.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses to them, will be published in the Federal Register and filed with the Court. Comments should be directed to Gary R. Spratling, Chief, San Francisco Field Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102 (telephone: 415/556-6300).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, (415) 556-6300, Attorneys for the United States.

James R. Moore, Reinwald, O'Connor & Marrack, Suite 2400—PRI Tower, 733 Bishop Street, Honolulu, Hawaii 96813, (808) 524-8350, Attorneys for Plumbing & Mechanical Contractors Association of Hawaii.

United States District Court for the District of Hawaii

United States of America, Plaintiff, v. *Plumbing & Mechanical Contractors Association of Hawaii,* Defendant; Antitrust.

Filed: June 16, 1987

[Civil No. 870469ACK]

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the Plaintiff:

Charles F Rule

Acting Assistant Attorney.

Roger B. Andewelt,

Judy Whalley,

Gary R. Spratling,

Attorneys, Department of Justice.

Daniel A. Bent

United States Attorney District of Hawaii.

Robert J. Staal,

Phillip H. Warren,

Howard J. Parker,

Attorneys, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, Telephone: (415) 556-6300.

For the Defendants:

James R. Moore

Counsel for Plumbing & Mechanical Contractors Association.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, (415) 556-6300, Attorneys for the United States.

U.S. District Court for the District of Hawaii

United States of America, Plaintiff v. *Plumbing & Mechanical Contractors Association of Hawaii,* Defendant; Antitrust.

Filed: June 16, 1987

Civil No. 870469ACK.

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on June 16, 1987 and plaintiff and defendant, by their respective attorneys, having consented to entry of this Final Judgmen without trial or adjudication of any issue of fa or law herein, and without this Final Judgment constituting any evidence against, or any admission by, any party with respect to any issue of fact or law herein;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

Ordered, Adjudged, and Decreed as follows:

I.

This Court has jurisdiction of the subject matter of this action and the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II.

Definitions

As used in this Final Judgment:

A. "Awarding authority" means any governmental or private entity that contracts for the performance of construction projects;

B. "General contractor" means any person who contracts with awarding authorities for the performance of construction projects;

C. "Specialty contractor," also known as a subcontractor, means any person who supplies specialty contracting services (e.g., plumbing, electrical, masonry) to general contractors for construction projects;

D. "Material supplier" means any person who supplies materials to general or specialty contractors for use on construction projects;

E. "Person" means any individual, partnership, firm, association, corporation, or other business or legal entity;

F. "Prime bid" means an offer to an awarding authority by a general contractor for the purpose of obtaining a contract for a construction project;

G. "Sub-bid" means an offer to a general contractor by a specialty contractor to supply specialty contracting services for a construction project, or by a material supplier to supply materials for a construction project;

H. "Confirmation bid" means written confirmation of a sub-bid, which confirmation is filed by a specialty contractor or material supplier with a bid depository; and

I. "Bid depository" means a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, or that receives confirmation bids filed by specialty contractors and material suppliers.

III.

This Final Judgment applies to the defendant Plumbing & Mechanical Contractors Association of Hawaii ("PMCAH") and to each of its subsidiaries, successors, and assigns, and to each of its officers, directors, agents, managers and other employees, and to all other persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

Defendant is enjoined and restrained from directly or indirectly continuing, maintaining, initiating, adopting, ratifying, entering into, carrying out, furthering, disseminating, publishing, or enforcing any bidding procedure, plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement that has the purpose or effect of:

A. Suppressing, restraining, or discouraging general contractors and specialty contractors or material suppliers from negotiating at any time plumbing and mechanical sub-bids on construction projects;

B. Suppressing, restraining, or discouraging plumbing and mechanical contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project;

C. Stating that negotiation of sub-bids is contrary to any policy of PMCAH; or

D. Providing for review of plumbing and mechanical contractor and material supplier bids prior to the time bids are due to general contractors, or notification of any bidder of where its bid stands in relation to other bids.

V.

A. Defendant is ordered and directed to cancel and rescind within sixty (60) days of the date of entry of this Final Judgment, and is prohibited from directly or indirectly reinstating, every plan, program, course of action, statement of principle or policy, resolution, rule, by-lay, standard, or collective statement that is inconsistent with this Final Judgment, including provisions in its bidding procedure which provide that:

1. Confirmation bids for plumbing and mechanical subcontractors or material supplies must be filed with the PMCAH bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are considerably lower than the other bids, such low bidders are so notified.

B. Defendant is ordered and directed to include in any PMCAH rules concerning bidding for contracts on construction projects a statement that no PMCAH rule or policy prohibits negotiation of sub-bids, or requires that subcontracts be accepted only on sub-bids filed in accordance with PMCAH rules.

VI.

Nothing in Sections IV and V of this Final Judgment shall prohibit defendant from:

A. Complying with any requirements of an awarding authority regarding the procedures general contractors must follow in obtaining sub-bids for the preparation of prime bids; or

B. Maintaining a facility that gathers sub-bids from specialty contractors and materials suppliers and forwards them to general contractors, so long as use of the facility by any contractor is voluntary.

VII.

Defendant is ordered and directed to:

A. Furnish a copy of this Final Judgment to each of its officers, directors, agents, and managers within thirty (30) days after the date of the entry of this Final Judgment;

B. Furnish a copy of this Final Judgment to any successors to its officers, directors, agents, and managers within thirty (30) days after each successor becomes associated with the defendant;

C. Obtain from each of its officers, directors, agents, and managers, and their successors, who have been furnished a copy of this Final Judgment, a signed receipt therefor, which receipt shall be retained in the defendant's files;

D. Attach to each copy of this Final Judgment furnished to its officers, directors, agents, and managers, and their successors, a statement, in the form set forth in Appendix A attached hereto, with the following sentence added to the letter: "Sections IV and V of the Final Judgment apply to you. If you violate these provisions, you may subject PMCAH to a fine, and you may also subject yourself to a fine and imprisonment."; and

E. Hold, within seventy-five (75) days after the date of entry of this Final Judgment, a meeting of its officers, directors, agents, and managers, at which meeting such persons shall be instructed concerning the defendant's and their obligations under this Final Judgment. Similar meetings shall be held at least once a year during the term of this Final Judgment; provided, however, that no meeting must be held during any calendar year in which defendant has had no bidding procedure, plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement

concerning any aspect of bidding for contracts on construction projects.

VIII.

Defendant is ordered and directed to:

A. Furnished a copy of this Final Judgment together with a letter on the letterhead of PMCAH, in the form set forth in Appendix A attached hereto, to each of its members within thirty (30) days after the date of entry of this Final Judgment;

B. Furnished a copy of this Final Judgment together with a letter on the letterhead of PMCAH, In the form set forth in Appendix a attached hereto, to each new member within thirty (30) days after the member joins PMCAH; and

C. Publish in the *GCA Weekly Bid Bulletin*, or in the event GCA ceases publication of its *Weekly Bid Bulletin* in a comparable construction trade publication, the notice attached hereto as Appendix B.

IX.

Defendant is ordered and directed to:

A. Establish and implement a plan for monitoring compliance by its officers, directors, agents, and managers and other employees with the terms of the Final Judgment;

B. File with this Court and serve upon the plaintiff, within ninety (90) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with this Final Judgment; and

C. File with this Court and serve upon the plaintiff annually on each anniversary date during the term of this Final Judgment and affidavit setting forth all steps it has taken during the preceding year to discharge its obligations under this Final Judgment.

X.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

1. Access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, agents, and managers and other employees of the defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

XI.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XII.

This Final Judgment shall expire ten (10) years from its date of entry.

XIII.

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge.

Appendix A

Re: *United States* v. *Plumbing & Mechanical Contractors Association of Hawaii* (Civil No. _____)

Dear Sir or Madam: The Plumbing & Mechanical Contractors Association of Hawaii ("PMCAH") has recently entered into a Final Judgment with the United States Department of Justice to settle a civil antitrust case filed against the Association. That case, *United States* v. *Plumbing & Mechanical Contractors Association of Hawaii* (Civil No. _____), concerned PMCAH's bidding procedure that governed a substantial number of plumbing and mechanical subcontracts on construction projects in the State of Hawaii. Our Association has been cooperating with the Department of Justice regarding this matter, and we have voluntarily agreed to the revisions of our bid depository rules outlined below. This Final Judgment does not constitute a finding or admission of wrongdoing.

Under the terms of the Final Judgment signed by Judge _____ of the District of Hawaii, PMCAH has agreed to eliminate all bid procedures or practices that in any manner may:

1. Restrict or discourage specialty contractors or material suppliers and general contractors from negotiating plumbing, and mechanical sub-bids; or

2. Restrict or discourage plumbing and mechanical contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project.

Specifically, PMCAH has agreed to delete from its bidding procedure rules which provide that:

1. Confirmation bids for plumbing and mechanical subcontracts or material supplies must be filed with the PMCAH bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are considerably lower than the other bids, such low bidders are so notified.

The General Contractors Association of Hawaii, Hawaii Island Contractors Association, Gypsum Drywall Contractors of Hawaii, Maui Contractors Association, Mason Contractors Association of Hawaii, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii, and Sheet Metal Contractors Association have also recently settled civil antitrust cases and have agreed to eliminate provisions in their bidding procedures similar to the PMCAH rules being eliminated.

A copy of the entire Final Judgment is enclosed with this letter and will in the future be available upon request. I urge you to read it carefully.

Sincerely yours,

Appendix B

The Plumbing & Mechanical Contractors Association of Hawaii ("PMCAH") has recently entered into a Final Judgment with the United States Department of Justice to settle an antitrust case filed against the Association. That case, *United States* v. *Plumbing & Mechanical Contractors Association of Hawaii* (Civil No. _____), concerned the PMCAH's bidding procedure that governed a substantial number of plumbing and mechanical subcontracts on construction projects in the State of Hawaii. PMCAH has been cooperating with the Department of Justice regarding this matter, and has voluntarily agreed to the revisions of its bidding procedure outlined below. This Final Judgment does not constitute a finding or admission of wrongdoing.

Under the terms of the Final Judgment signed by Judge _____ of the District of Hawaii, PMCAH has agreed to eliminate all bid procedures or practices that in any manner may:

1. Restrict or discourage specialty contractors or material suppliers and general contractors from negotiating plumbing and mechanical sub-bids; or

2. Restrict or discourage plumbing and mechanical contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project.

Specifically, PMCAH has agreed to delete from its bidding procedure rules which provide that:

1. Confirmation bids for plumbing and mechanical subcontracts or material supplies must be filed with the PMCAH bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A special contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are considerably lower than the other bids, such low bidders are so notified.

The General Contractors Association of Hawaii, Hawaii Island Contractors Association, Gypsum Drywall Contractors of Hawaii, Maui Contractors Association, Mason Contractors Association of Hawaii, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii, and Sheet Metal Contractors Association have also recently settled civil antitrust cases and have agreed to eliminate provisions in their bidding procedures similar to the PMCAH rules being eliminated.

Robert J. Staal,
Phillip H. Warren,
Howard J. Parker,
Attorneys for the United States, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, 16th Floor, Box 36046, San Francisco, California 94102, Telephone: 415/556-6300.

United States District Court for the District of Hawaii

United States of America, Plaintiff, v. *Plumbing & Mechanical Contractors Association of Hawaii,* Defendant.

Filed: June 16, 1987.

Civil No. 870469

Competitive Impact Statement

As required by Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), the United States files this Competitive Impact Statement on the proposed Final Judgment submitted for the Court's approval in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On June 16, 1987, the United States filed nine related civil antitrust complaints under Section 1 of the Sherman Act, 15 U.S.C. 1, against nine construction trade associations in Hawaii. Each complaint alleges that a trade association conspired with its members to restrain competition by adopting and enforcing certain rules that restrict bidding on construction projects in Hawaii. The United States and each of the nine defendants have agreed to Final Judgments in settlement of the cases. The Complaints and proposed Final Judgments in the nine cases are similar.

Defendant Plumbing & Mechanical Contractors Association of Hawaii (hereinafter "PAMCAH") is a Hawaii corporation with its principal place of business in Honolulu, Hawaii. PAMCAH modeled its bidding rules on those of General Contractors Association ("GCA"), the first construction trade association in Hawaii to adopt bidding rules.

Plaintiff and defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless plaintiff withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to interpret, modify, enforce, and punish violations of the Final Judgment.

II

Description of the Practices Giving Rise to the Alleged Violation of the Antitrust Laws

A. The Bid Depository System in Hawaii

A bid depository is a system for the collection and dissemination of bids or sub-bids for the performance of construction services. A bid depository collects and compiles bids submitted by a date certain and then disseminates them to bidding authorities or general contractors seeking the bids or sub-bids, respectively. By facilitating the bidding process, bid depositories can improve the efficiency of the contracting process and thereby promote rather than harm competition. The complaint in this case alleges, however, that the defendant adopted a number of rules governing the operation of its bid depository that restrained competition for subcontracts on construction projects governed by the PAMCAH bidding procedures, by prohibiting and precluding negotiation of sub-bids once they were submitted to the bid depository.

On most major construction projects in Hawaii, including most government projects, the governmental and private entities that contract for construction services (known as "awarding authorities") do so by soliciting and accepting bids from general contractors. In preparing their respective bids,

general contractors usually solicit and accept bids from the various specialty contractors (e.g., plumbing, electrical, masonry contractors) and material suppliers whose work will be needed on the project. A bid to a general contractor by a specialty contractor or material supplier to provide services or materials for a construction project is known in the trade as a "sub-bid."

Since 1949, GCA has maintained and enforced rules that regulate bidding by specialty contractors to general contractors on a substantial number of construction projects in Oahu, Hawaii. The rules, known collectively as the "GCA bidding procedure," govern the operation of GCA's bid depository. Two other general contractor associations in the State of Hawaii operate bid depositories: the Hawaii Island Contractor's Association (since 1972) and the Maui Contractors Association (since 1977).

Six specialty contractor associations operate bid depositories in conjunction with the three general contractor associations in Hawaii. These associations are defendant PAMCAH, Gypsum Drywall Contractors of Hawaii, Mason Contractors Association of Hawaii, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii, and Sheet Metal Contractors Association. All of these bid depositories have rules similar to the GCA bidding procedure.

Under its rules GCA determines which construction projects will be subject to its bid depository rules. If GCA chooses a particular project, then pursuant to the rules of the other associations, that project is also subject to the depository rules of those other associations. Under the controlling PAMCAH rules, the PAMCAH bid depository rules apply to all construction projects that are listed in the *GCA Weekly Bid Bulletin*. GCA selects the projects to be included in the *Bulletin* on its own and without the authorization or direction of the affected awarding authorities. In fact, GCA selects almost exclusively government construction projects for inclusion in the *GCA Weekly Bid Bulletin* and seldom includes any private projects. All significant construction projects in Hawaii that are awarded by federal, state, or local governmental entities are listed in the *GCA Weekly Bid Bulletin*.

All significant general contractors operating on the island of Oahu are members of GCA and abide by the bidding procedure for projects on Oahu that are listed in the *GCA Weekly Bid Bulletin*. The bidding rules are only suspended by GCA if non-Hawaiian general contractors who may be unwilling to abide by the procedures appear on the bidders list for a project. On construction projects to which the GCA bidding procedure applies, in almost all instances the only bids received by awarding authorities from general contractors are bids developed in accordance with that procedure.

Similarly, the membership of each of the six defendant specialty contractor associations includes all significant specialty contractors in each of the trades in Hawaii, and all association members abide by the rules and procedures of their association's bid depository. Thus, even if a general contractor were not a member of GCA and did not want to go through the bid depository procedures, if generally would be forced to agree to the procedures because, if it did not, the Hawaiian specialty contractors would be precluded by their rules from dealing with that general contractor. Hence, the general contractor would not be able to obtain an adequate number of sub-bids from qualified specialty contractors. Indeed, on construction projects to which the associations' bidding procedures apply, in almost all instances the only bids received by awarding authorities from general contractors are bids based on sub-bids submitted in accordance with those procedures. (In a small number of projects, non-Hawaiian general contractors bring in mainland subcontractors to work on Hawaiian projects.)

The three general contractor and six specialty contractor associations are interrelated. Many specialty contractors are members of both their specialty trade association and a general contractor association. The general contractor associations have virtually identical bid procedures, and they cooperate with one another by transmitting or receiving bids from members of one depository for construction projects on an island under the jurisdiction of another. The six specialty contractor associations have bidding procedures modeled after the GCA's rules. The general and specialty contractor associations often cooperate in enforcing their bidding procedures.

In addition, five of the six defendant specialty contractor associations have a rule not found in the general contractor association bidding procedures. This rules requires that any bidder whose bid is "considerably" lower than other bids shall be contacted by the bidder's association and requested to review its bid. (Of these five rules, only the Mason Contractors Association's rule specifies that a bidder shall be contacted if its bid is a certain percentage (10%) below most other bids.) After notification, the bidder is permitted to stand by the bid or withdraw it, but not change it. The rule also provides for tabulation and dissemination among specialty contractors of sub-bid prices after general contractors have opened bids.

B. The PAMCAH Bidding Procedure

The Complaint filed against PAMCAH alleges that PAMCAH 's bidding procedure provides, among other things, that:

1. Confirmation bids for plumbing and mechanical subcontractors or material supplies must be filed with the PAMCAH bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are considerably lower than the others, such low bidders are so notified.

The Complaint also alleges that beginning at least as early as 1964 and continuing to the present, the defendant engaged in a conspiracy consisting of an agreement, the substantial terms of which were to:

1. Assure that a substantial number of construction projects in the State of Hawaii would be governed by the PAMCAH bidding procedure and other rules and procedures established by bid depositories operated by other associations of contractors in the State of Hawaii;

2. Restrain and prohibit the negotiation of sub-bids on plumbing and mechanical subcontracts governed by the PAMCAH bidding procedure by, among other things, inhibiting the seeking of lower prices by general contractors or the offering of lower prices by plumbing and mechanical contractors or material suppliers;

3. Restrain and prohibit the offering of sub-bids, or the acceptance of subcontracts, by plumbing and mechanical contractors or material suppliers that do not comply with the PAMCAH bidding procedures; and

4. Review plumbing and mechanical contractor and material supplier bids prior to the time bids are due to general

contractors and advise any bidders whose sub-bids are considerably lower than the others of that fact.

In addition, the Complaint alleges that the conspiracy had the following effects:

1. Competition among plumbing and mechanical contractors and material suppliers in the sale of plumbing and mechanical contracting services and materials to general contracts on construction projects governed by the PAMCA bidding procedure has been unreasonably restrained, suppressed, and eliminated; and

2. Competition among general contractors in negotiating sub-bids for plumbing and mechanical contracting services and materials for construction projects governed by the PAMCAH bidding procedure has been unreasonably restrained, suppressed, and eliminated.

The regulation of negotiations between general contractors and subcontractors is not anticompetitive in all situations. Here, however, as explained above, the general contractor associations and the specialty contractor and material supplier associations each possess market power for construction projects in Hawaii. In addition, the decision to limit negotiations between general contractors and specialty contractors was not the decision of the awarding authority, but rather was the decision of the general contractors acting in concert and the decision of the specialty contractors acting in concert. In this context we concluded that the association rules were anticompetitive because they unreasonably deprived the awarding authority of free and open competition in negotiations between general contractors and specialty contractors and material suppliers, for the performance of subcontracts on construction projects subject to the bidding procedures.

The specialty contractor associations' rules requiring notification of bidders whose sub-bids are considerably lower than other bids are anticompetitive and result in increased prices for specialty contract work. The rules permit a bidder who has submitted an accurate bid to withdraw the bid simply because it is "too low." When the lower bidder withdraws a bid after being notified as required by the association rules, the second lowest bidder wins the job with an increased profit margin.

The only purported justification for these rules is that notifying low bidders that they are significantly lower prevents the award of a bid to a specialty contractor who made a mistake in calculating its bid, and who, in performing the job at the mistaken bid price, may go bankrupt, leaving the general contractor and the project owner with an unfinished job. This justification fails on two points. First, it appears that specialty contractors have regularly withdrawn bids that contain no mistake (other than being too low). Second, the justification advanced is a concern of the general contractors that, to the extent it exists, can and should be addressed by the general contractors who have a strong incentive to ensure that a specialty contractor is able to complete its job. General contractors routinely screen low bids for errors. Thus it is unnecessary for competitors to screen each other's bids to address this concern.

III

Explanation of the Proposed Final Judgment

The proposed Final Judgment enjoins PAMCAH from continuing or renewing the anticompetitive conduct alleged in the Complaint. Specifically, Section IV prohibits PAMCAH from maintaining, directly or indirectly, any written or unwritten rule that has the purpose or effect of:

1. Suppressing, restraining, or discouraging general contractors and specialty contractors or material suppliers from negotiating at any time plumbing and mechanical sub-bids on construction projects;

2. Suppressing, restraining, or discouraging plumbing and mechanical contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project;

3. Stating that negotiation of sub-bids is contrary to any policy of PAMCAH; or

4. Providing for review of plumbing and mechanical contractor and material supplier bids prior to the time bids are due to general contractors, or notification of any bidder of where its bid stands in relation to other bids.

Section V orders PAMCAH to eliminate within 60 days all written and unwritten rules that are inconsistent with the Final Judgment, including provisions in its bidding procedure which provide that:

1. Confirmation bids for plumbing and mechanical subcontracts or material supplies must be filed with the PAMCAH bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are considerably lower than the other bids, such low bidders are so notified.

Section V.B. orders PAMCAH to include in any PAMCAH rules on bidding for contracts on construction projects a statement that no PAMCAH policy prohibits negotiation of sub-bids, or requires that subcontracts be awarded only on sub-bids filed in accordance with PAMCAH rules.

Section VI.A provides, however, that defendant is not enjoined from complying with any requirement of an awarding authority regarding the procedures general contractors must follow in obtaining sub-bids for the preparation of prime bids. This provision ensures that the proposed Final Judgment does not in any way limit awarding authorities' ability to establish bidding requirements for contractors. If the awarding authority decided that a regulated bidding system which prevented post-filing negotiations between contractors and subcontractors was appropriate, it could insist on it, and the contractors and subcontractors could comply without violating the decree.

Section VI.B further states that defendant is not enjoined from maintaining a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, so long as use of the services it provides is voluntary. This provision ensures that the proposed Final Judgment does not prohibit PAMCAH from operating a bid depository so long as the services provided are voluntary and do not prohibit negotiations between general and specialty contractors.

Sections VII and VIII ensure that full notice of the requirements of the Final Judgment is given to all of PAMCAH's officers, directors, managers, and members.

Section IX requires PAMCAH to establish and implement a plan for monitoring compliance with the terms of the proposed Final Judgment. PAMCAH is also required to file with the Court and the United States within ninety (90) days after date of entry of the Final Judgment, an affidavit explaining the steps it has taken to comply with the Final Judgment. PAMCAH is required to

file similar affidavits each year the Final Judgment is in effect.

Section XII makes the Final Judgment effective for ten (10) years from the date of its entry.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgment

The APPA provides that any person wishing to comment on the proposed Final Judgment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. Any person who believes that the proposed Final Judgment should be modified, may submit written comments within the statutory 60-day period to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, United States Department of Justice, 450 Golden Gate Avenue, 16th Floor, Box 36046, San Francisco, California 94102 (Telephone: 415/556-6300). These comments and the Department's response to them will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. Further, Section XI provides that the Court retains jurisdiction over this action and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI

Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgment considered by the Antitrust Division was a full trial on the merits and on relief. The Division considers the proposed Final Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violations alleged in the Complaint.

The effect of the proposed Final Judgment should be to eliminate entirely the alleged restraints on competition that are set forth in the Complaint. In particular, under the proposed Final Judgment, general contractors and specialty contractors and material suppliers can no longer agree to limit negotiations on the terms of sub-bids with each other. General contractors will be able freely to consider bids from any and all capable specialty contractors and material suppliers. Moreover, specialty contractors will be prohibited from notifying bidders whose bids are considerably lower than the next lower bids. In sum, price competition among general contractors and among specialty contractors and material suppliers will be facilitated, to the benefit of awarding authorities and, indirectly, to the benefit of federal and state taxpayers. The proposed Final Judgment adequately redresses all aspects of the government's Complaint in this case.

The Division also considered including in the proposed Final Judgment an injunction against the specialty contractor associations' practice of tabulating and disseminating the prices contained in bids submitted to their depositories. Such exchanges of price information can be procompetitive in that, by providing firms with information about competitors, they ultimately can help firms identify ways in which to lower their costs. But in some circumstances where a market is otherwise prone to collusion, such exchanges of price information can be used to police pricing agreements and can have an anticompetitive effect. The Division chose not to impose an injunction against such information exchange in this case because it cannot be predicted that an exchange of information, on balance, would be anticompetitive in this market after entry of the proposed Final Judgment with its injunction against anticompetitive practices by the depositories. The Division concluded that such an injunction is not now necessary to restore full and vigorous competition to the affected markets.

VII

Determinative Materials and Documents

The United States considered no materials or documents to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed pursuant to the APPA, 15 U.S.C. 16(b).

Dated:

Respectfully submitted,

Robert J. Staal,

Phillip H. Warren,

Howard J. Parker,

Attorneys, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, Telephone: 415/556-6300.

[FR Doc. 87-15110 Filed 7-7-87; 8:45 am]

BILLING CODE 4410-01-M

United States v. Sheet Metal Contractors Association; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment and Competitive Impact Statement ("CIS") have been filed with the United States District Court for the District of Hawaii in *United States* v. *Sheet Metal Contractors Association.* The Complaint in this case alleges that the Sheet Metal Contractors Association unreasonably restrained competition by adopting and adhering to certain rules governing the submission of bids by specially contractors to general contractors on a substantial number of construction projects in Hawaii.

The proposed Final Judgment requires the defendant to cancel all formal and informal rules that restrain negotiations between sheet metal contractors and general contractors or that restrain sheet metal contractors from offering bids to, or accepting subcontracts from, a general contractor on any project. It also requires elimination of rules that provide for notification of any sheet metal contractor of where its bid stands in relation to other bids prior to the time bids are due to general contractors.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses to them, will be published in the Federal Register and filed with the Court. Comments should be directed to Gary R. Spratling, Chief, San Francisco Field Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102 (telephone: 415/556-6300).

Joseph H. Widmar,

Director of Operations Antitrust Division.

Robert J. Stall,

Phillip H. Warren,

Howard J. Parker,
Attorneys for the United States, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, (415) 556-6300.

James R. Moore,

Reinwald, O'Conner & Marrack,
Attorneys for Sheet Metal Contractors Association, Suite 2400—PRI Tower, 733 Bishop Street, Honolulu, Hawaii 96813, (808) 524-8350.

United States District Court for the District of Hawaii

United States of America, Plaintiff, v. *Sheet Metal Contractors Association*, Defendant.

Filed: June 16, 1987.
Civil No. 870470ACK
Antitrust

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipultion shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the Plaintiff:

Charles F. Rule,
Acting Assistant Attorney General.

Roger B. Andewelt,

Judy Whalley,

Gary R. Spratling,
Attorneys, Department of Justice.

Daniel A. Bent,
United States Attorney, District of Hawaii.

Robert J. Stall,
Phillip H. Warren,

Howard J. Parker,
Attorneys, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, (415) 556-6300.

For the Defendants:

James R. Moore,
Counsel for Sheet Metal Contractors Association.
Robert J. Staal,
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United States District Court for the District of Hawaii

United States of America, Plaintiff, v. *Sheet metal Contractors Association*, Defendant.

Filed: June 16, 1987.
Civil No. 870470 ACK
Antitrust

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on June 16, 1987, and plaintiff and defendant, by their respective attorneys, having consented to entry of this Final Judgment without trial or adjudication of any issue of fact of law herein, and without this Final Judgment constituting any evidence against, or any admission by, any party with respect to any issue of fact or law herein.

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby Ordered, Adjudged, and Decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. 1).

II

Definitions

As used in this Final Judgment:

A. "Awarding authority" means any governmental or private entity that contracts for the performace of construction projects;

B. "General contractor" means any person who contracts with awarding authorities for the performance of construction projects;

C. "Specialty contractor," also known as a subcontractor, means any person who supplies specialty contracting services (e.g., plumbing, electrical, masonry) to general contractors for construction projects;

D. "Material supplier" means any person who supplies materials to general or specialty contractors for use on construction projects;

E. "Person" means any individual, partnership, firm, association, corporation, or other business or legal entity;

F. "Prime bid" means an offer to an awarding authority by a general contractor for the purpose of obtaining a contract for a construction project;

G. "Sub-bid" means an offer to a general contractor by a specialty contractor to supply specialty contracting services for a construction project, or by a material supplier to supply materials for a construction project;

H. "Confirmation bid" means written confirmation of a sub-bid, which confirmation is filed by a specialty contractor or material supplier with a bid depository; and

I. "Bid depository" means a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, or that receives confirmation bids filed by specialty contractors and material suppliers.

III

This final Judgment applies to the defendant Sheet Metal Contractors Association ("SMCA") and to each of its subsidiaries, successors, and assigns, and to each of its officers, directors, agents, managers and other employees,

and to all other persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant is enjoined and restrained from directly or indirectly continuing, maintaining, initiating, adopting, ratifying, entering into, carrying out, furthering, disseminating, publishing, or enforcing any bidding procedure, plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement that has the purpose or effect of:

A. Suppressing, restraining, or discouraging general contractors and speciality contractors or material suppliers from negotiating at any time sheet metal sub-bids on construction projects;

B. Suppressing, restraining, or discouraging sheet metal contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on that project;

C. Stating that negotiation of sub-bids is contrary to any policy of SMCA; or

D. Providing for review of sheet metal contractor and material supplier bids prior to the time bids are due to general contractors, or notification of any bidder of where its bid stands in relation to other bids.

V

A. Defendant is ordered and directed to cancel and rescind within sixty (60) days of the date of entry of this Final Judgment, and is prohibited from directly or indirectly reinstating, every plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement that is inconsistent with this Final Judgment, including provisions in its bidding procedure which provide that:

1. Confirmation bids for sheet metal subcontracts or material suppies must be filed with the SMCA bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are considerably lower than the other bids, such low bidders are so notified.

B. Defendant is ordered and directed to include in any SMCA rules concerning bidding for contracts on construction projects a statement that no SMCA rule or policy prohibits negotiation of sub-bids, or requries that subcontracts be accepted only on sub-bids filed in accordance with SMCA rules.

VI

Nothing in Sections IV or V of this Final Judgment shall prohibit defendant from:

A. Complying with any requirements of an awarding authority regarding the procedures general contractors must follow in obtaining sub-bids for the preparation of prime bids; or

B. Maintaining a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, so long as use of the facility of any contractor is voluntary.

VII

Defendant is ordered and directed to:

A. Furnish a copy of this Final Judgment to each of its officers, directors agents, and managers within thirty (30) days after the date of the entry of this Final Judgment;

B. Furnish a copy of this Final Judgment to any successors to its officers, directors, agents, and managers within thirty (30) days after each successor becomes associated with the defendant;

C. Obtain from each of its officers, directors, agents, and managers, and their successors, who have been furnished a copy of this Final Judgment, a signed receipt therefor, which receipt shall be retained in the defendant's files;

D. Attach to each copy of this Final Judgment furnished to its officers, directors, agents, and managers, and their successors, a statement, in the form set forth in Appendix A attached hereto, with the following sentence added to the letter: "Sections IV and V of the Final Judgment apply to you. If you violate these provisions, you may subject SMCA to a fine, and you may also subject yourself to a fine and imprisonment."; and

E. Hold, within seventy-five (75) days after the date of entry of this Final Judgment, a meeting of its officers, directors, agents, and mangers, at which meeting such persons shall be instructed concerning the defendants's and their obligations under this Final Judgment. Similar meetings shall be held at least once a year during the term of this Final Judgment; provided, however, that no meeting must be held during any calendar year in which defendant has had no bidding procedure, plan, program, course of action, statement of principle or policy, resolution rule, by-law, standard, or collective statement concerning any aspect of bidding for contracts on construction projects.

VIII

Defendant is ordered and directed to:

A. Furnish a copy of this Final Judgment together with a letter on the letterhead of SMCA, in the form set forth in Appendix A attached hereto, to each of its members within thirty (30) days after the date of entry of this Final Judgment;

B. Furnish a copy of this Final Judgment together with a letter on the letterhead of SMCA, in the form set forth in Appendix A attached hereto, to each new member within thirty (30) days after the member joins SMCA; and

C. Publish in the *GCA Weekly Bid Bulletin*, or in the event GCA ceases publication of its *Weekly Bid Bulletin* in a comparable construction trade publication, the notice attached hereto as Appendix B.

IX

Defendant is ordered and directed to:

A. Establish and implement a plan for monitoring compliance by its officers, directors, agents, and managers and other employees with the terms of the Final Judgment;

B. File with this Court and serve upon the plaintiff, within ninety (90) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with this Final Judgment; and

C. File with this Court and serve upon the plaintiff annually on each anniversary date during the term of this Final Judgment an affidavit setting forth all steps it has taken during the preceding year to discharge its obligations under this Final Judgment.

X

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

1. Access during the office hours of the defendant to inspect and copy all

books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, agents, and managers and other employees of the defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

XI

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XII

This Final Judgment shall expire ten (10) years from its date of entry.

XIII

Entry of this Final Judgment is in the public interest.

Dated: _____

United States District Judge.

Appendix A

Re: United States v. Sheet Metal Contractors Association (Civil No. _____)

Dear Sir or Madam: The Sheet Metal Contractors Association ("SMCA") has recently entered into a Final Judgment with the United States Department of Justice to settle a civil antitrust case filed against the Association. That case, *United States* v. *Sheet Metal Contractors Association* (Civil No. _____), concerned SMCA's bidding procedure that governed a substantial number of sheet metal subcontracts on construction projects in the State of Hawaii. Our Association has been cooperating with the Department of Justice regarding this matter, and we have voluntarily agreed to the revisions of our bid depository rules outlined below. This Final Judgment does not constitute a finding or admission of wrongdoing.

Under the terms of the Final Judgment signed by Judge _____) of the District of Hawaii, SMCA has agreed to eliminate all bid procedures or practices that in any manner may:

1. Restrict or discourage specialty contractors or material suppliers and general contractors from negotiating sheet metal sub-bids; or

2. Restrict or discourage sheet metal contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project.

Specifically, SMCA has agreed to delete from its bidding procedure rules which provide that:

1. Confirmation bids for sheet metal subcontracts or material suppliers must be filed with the SMCA bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor.

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are considerably lower than the other bids, such low bidders are so notified.

The General Contractors Association of Hawaii, Hawaii Island Contractors Association, Gypsum Drywall Contractors of Hawaii, Maui Contractors Association, Mason Contractors Association of Hawaii, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii and Plumbing & Mechanical Contractors Association of Hawaii, and have also recently settled civil antitrust cases and have agreed to eliminate provisions in their bidding procedures similar to the SMCA rules being eliminated.

A copy of the entire Final Judgment is enclosed with this letter and will in the future be available upon request. I urge you to read it carefully.

Sincerely yours,

Appendix B

The Sheet Metal Contractors Association ("SMCA") has recently entered into a Final Judgment with the United States Department of Justice to settle an antitrust case filed against the Association. That case *United States v. Sheet Metal Contractors Association* (Civil No. _____), concerned the SMCA's bidding procedure that governed a substantial number of sheet metal subcontractors on construction projects in the State of Hawaii. SMCA has been cooperating with the Department of Justice regarding this matter, and has voluntarily agreed to the revisions of its bidding procedure outlined below. This Final Judgment does not constitute a finding or admission of wrongdoing.

Under the terms of the Final Judgment signed by Judge _____ of the District of Hawaii, SMCA has agreed to eliminate all bid procedures or practices that in any manner may:

1. Restrict or discourage specialty contractors or material suppliers and general contractors from negotiating sheet metal sub-bids; or

2. Restrict or discourage sheet metal contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project.

Specifically, SMCA has agreed to delete from its bidding procedure rules which provide that:

1. Confirmation bids for sheet metal subcontracts or material supplies must be filed with the SMCA bid depository

as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Field bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are considerably lower than the other bids, such low bidders are so notified.

The General Contractors Association of Hawaii, Hawaii Island Contractors Association, Gypsum Drywall Contractors of Hawaii, Maui Contractors Association, Mason Contractors Association of Hawaii, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii and Plumbing & Mechanical Contractors Association of Hawaii have also recently settled civil antitrust cases and have agreed to eliminate provisions in their bidding procedures similar to the SMCA rules being eliminated.

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United States District Court for the District of Hawaii

United States of America, Plaintiff, v. *Sheet Metal Contractors Association,* Defendant.

Filed: June 16, 1987.

Civil No. 870470ACK

Competitive Impact Statement

As required by Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), the United States files this Competitive Impact Statement on the proposed Final Judgment submitted for the Court's approval in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On June 16, 1987, the United States filed nine related civil antitrust complaints under Section 1 of the Sherman Act, 15 U.S.C. 1, against nine construction trade associations in Hawaii. Each complaint alleges that a trade association conspired with its members to restrain competition by adopting and enforcing certain rules that restrict bidding on construction projects in Hawaii. The United States and each of the nine defendants have agreed to Final Judgments in settlement of the cases. The Complaints and proposed Final Judgments in the nine cases are similar.

Defendant Sheet Metal Contractors Association ("SMCA") is a Hawaii corporation with its principal place of business in Honolulu, Hawaii. SMCA modeled its bidding rules on those of General Contractors Association ("GCA"), the first construction trade association in Hawaii to adopt bidding rules.

Plaintiff and defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless plaintiff withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to interpret, modify, enforce, and punish violations of the Final Judgment.

II

Description of the Practices Giving Rise to the Alleged Violation of the Antitrust Laws

A. The Bid Depository System in Hawaii

A bid depository is a system for the collection and dissemination of bids or sub-bids for the performance of construction services. A bid depository collects and compiles bids submitted by a date certain and then disseminates them to bidding authorities or general contractors seeking the bids or sub-bids, respectively. By facilitating the bidding process, bid depositories can improve the efficiency of the contracting process and thereby promote rather than harm competition. The complaint in this case alleges, however, that the defendant adopted a number of rules governing the operation of its bid depository that restrained competition for subcontracts on construction projects governed by the SMCA bidding procedures, by prohibiting and precluding negotiation of sub-bids once they were submitted to the bid depository.

On most major construction projects in Hawaii, including most government projects, the governmental and private entities that contract for construction services (known as "awarding authorities") do so by soliciting and accepting bids from general contractors. In preparing their respective bids, general contractors usually solicit and accept bids from the various specialty contractors (e.g., plumbing, electrical, masonry contractors) and material suppliers whose work will be needed on the project. A bid to a general contractor by a specialty contractor or material supplier to provide services or materials for a construction project is known in the trade as a "sub-bid."

Since 1949, GCA has maintained and enforced rules that regulate bidding by specialty contractors to general contractors on a substantial number of construction projects in Oahu, Hawaii. The rules, known collectively as the "GCA bidding procedure," govern the operation of GCA's bid depository. Two other general contractor associations in the State of Hawaii operate bid depositories: the Hawaii Island Contractors' Association (since 1972) and the Maui Contractors Association (since 1977).

Six specialty contractor associations operate bid depositories in conjunction with the three general contractor associations in Hawaii. These associations are defendant SMCA, Gypsum Drywall Contractors of Hawaii, Mason Contractors Association of Hawaii, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii, and Plumbing & Mechanical Contractors Association of Hawaii. All of these bid depositories have rules similar to the GCA bidding procedure.

Under its rules GCA determines which construction projects will be subject to its bid depository rules. If GCA chooses a particular project, then pursuant to the rules of the other associations, that project is also subject to the depository rules of those other associations. Under the controlling SMCA rules, the SMCA bid depository rules apply to all construction projects that are listed in the *GCA Weekly Bid Bulletin.* GCA selects the projects to be included in the *Bulletin* on its own and without the authorization or direction of the affected awarding authorities. In fact, GCA selects almost exclusively government construction projects for inclusion in the *GCA Weekly Bid Bulletin* and seldom includes any private projects. All significant construction projects in Hawaii that are awarded by federal, state, or local governmental entities are listed in the *GCA Weekly Bid Bulletin.*

All significant general contractors operating on the island of Oahu are members of GCA and abide by the bidding procedure for projects on Oahu that are listed in the *GCA Weekly Bid Bulletin.* The bidding rules are only suspended by GCA if non-Hawaiian general contractors who may be

unwilling to abide by the procedures appear on the bidders list for a project. On construction projects to which the GCA bidding procedure applies, in almost all instances the only bids received by awarding authorities from general contractors are bids developed in accordance with that procedure.

Similarly, the membership of each of the six defendant specialty contractor associations includes all significant specialty contractors in each of the trades in Hawaii, and all association members abide by the rules and procedures of their association's bid depository. Thus, even if a general contractor were not a member of GCA and did not want to go through the bid depository procedures, it generally would be forced to agree to the procedures because, if it did not, the Hawaiian specialty contractors would be precluded by their rules from dealing with that general contractor. Hence, the general contractor would not be able to obtain an adequate number of sub-bids from qualified specialty contractors. Indeed, on construction projects to which the associations' bidding procedures apply, in almost all instances the only bids received by awarding authorities from general contractors are bids based on sub-bids submitted in accordance with those procedures. (In a small number of projects, non-Hawaiian general contractors bring in mainland subcontractors to work on Hawaiian projects.)

The three general contractor and six specialty contractor associations are interrelated. Many specialty contractors are members of both their specialty trade association and a general contractor association. The general contractor associations have virtually identical bid procedures, and they cooperate with one another by transmitting or receiving bids from members of one depository for construction projects on an island under the jurisdiction of another. The six specialty contractor associations have bidding procedures modeled after the GCA's rules. The general and specialty contractor associations often cooperate in enforcing their bidding procedures.

In addition, five of the six defendant specialty contractor associations have a rule not found in the general contractor association bidding procedures. This rule requires that any bidder whose bid is "considerably" lower than other bids shall be contacted by the bidder's association and requested to review its bid. (Of these five rules, only the Mason Contractors Association's rule specifies that a bidder shall be contacted if its bid is a certain percentage (10%) below most other bids.) After notification, the bidder is permitted to stand by the bid or withdraw it, but not change it. The rule also provides for tabulation and dissemination among specialty contractors of sub-bid prices after general contractors have opened bids.

B. The SMCA Bidding Procedure

The Complaint filed against SMCA alleges that SMCA's bidding procedure provides, among other things, that:

1. Confirmation bids for sheet metal subcontracts or material supplies must be filed with the SMCA bid depository as well as with the relevant general contractor association bid depository;
2. Filed bids may not be altered or changed after the deadline for their filing;
3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;
4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and
5. If any filed bids are considerably lower than the others, such low bidders are so notified.

The Complaint also alleges that beginning at least as early as 1976 and continuing to the present, the defendant engaged in a conspiracy consisting of an agreement, the substantial terms of which were to:

1. Assure that a substantial number of construction projects in the State of Hawaii would be governed by the SMCA bidding procedure and other rules and procedures established by bid depositories operated by other associations of contractors in the State of Hawaii;
2. Restrain and prohibit the negotiation of sub-bids on sheet metal subcontracts governed by the SMCA bidding procedure by, among other things, inhibiting the seeking of lower prices by general contractors or the offering of lower prices by sheet metal contractors or material suppliers;
3. Restrain and prohibit the offering of sub-bids, or the acceptance of subcontractors, by sheet metal contractors or material suppliers that do not comply with the SMCA bidding procedures; and
4. Review sheet metal contractor and material supplier bids prior to the time bids are due to general contractors and advise any bidders whose sub-bids are considerably lower than the others of that fact.

In addition, the Complaint alleges that the conspiracy had the following effects:

1. Competition among sheet metal contractors and material suppliers in the sale of sheet metal contracting services and materials to general contractors on construction projects governed by the SMCA bidding procedure has been unreasonably restrained, suppressed, and eliminated: and
2. Competition among general contractors in negotiating sub-bids for sheetmetal contracting services and materials for construction projects governed by the SMCA bidding procedure has been unreasonably restrained, suppressed, and eliminated.

The regulation of negotiations between general contractors and subcontractors is not anticompetitive in all situations. Here, however, as explained above, the general contractor associations and the specialty contractor associations each possess market power for construction projects in Hawaii. In addition, the decision to limit negotiations between general contractors and specialty contractors was not the decision of the awarding authority, but rather was the decision of the general contractors acting in concert and the decision of the specialty contractors acting in concert. In this context we concluded that the association rules were anticompetitive because they unreasonably deprived the awarding authority of free and open competition in negotiations between general contractors and specialty contractors and material suppliers, for the performance of subcontracts on construction projects subject to bidding procedures.

The specialty contractor associations' rules requiring notification of bidders whose sub-bids are considerably lower than other bids are anticompetitive and result in increased prices for specialty contract work. The rules permit a bidder who has submitted an accurate bid to withdraw the bid simply because it is "too low." When the low bidder withdraws a bid after being notified as required by the association rules, the second lowest bidder wins the job with an increased profit margin.

The only purported justification for these rules is that notifying low bidders that they are significantly lower prevents the award of a bid to a specialty contractor who made a mistake in calculating its bid, and who, in performing the job at the mistaken bid price, may go bankrupt, leaving the general contractor and the project owner with an unfinished job. This justification fails on two points. First, it appears that specialty contractors have

regularly withdrawn bids that contain no mistake (other than being too low). Second, the justification advanced is a concern of the general contractors that, to the extent it exists, can and should be addressed by the general contractors who have a strong incentive to ensure that a specialty contractor is able to complete its job. General contractors routinely screen low bids for errors. Thus it is unnecessary for competitors to screen each other's bids to address this concern.

III

Explanation of the Proposed Final Judgment

The proposed Final Judgment enjoins SMCA from continuing or renewing the anticompetive conduct alleged in the Complaint. Specifically, Section IV prohibits SMCA from maintaining, directly or indirectly, any written or unwritten rule that has the purpose or effect of:

1. Suppressing, restraining, or discouraging general contractors and specialty contractors or material suppliers from negotiating at any time sheet metal sub-bids on construction projects;

2. Suppressing, restraining, or discouraging sheet metal contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on that project;

3. Stating that negotiation of sub-bids is contrary to any policy of SMCA; or

4. Providing for review of sheet metal contractor and material supplier bids prior to the time bids are due to general contractors, or notification of any bidder of where its bid stands in relation to other bids.

Section V orders SMCA to eliminate within 60 days all written and unwritten rules that are inconsistent with the Final Judgment, including provisions in its bidding procedure which provide that:

1. Confirmation bids for sheet metal subcontracts or material supplies must be filed with the SMCA bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are considerably lower than the other bids, such low bidders are so notified.

Section V.B orders SMCA to include in any SMCA rules on bidding for contracts on construction projects a statement that no SMCA policy prohibits negotiation of sub-bids, or requires that subcontracts be awarded only on sub-bids filed in accordance with SMCA rules.

Section VI.A provides, however, that defendant is not enjoined from complying with any requirement of an awarding authority regarding the procedures general contractors must follow in obtaining sub-bids for the preparation of prime bids. This provision ensures that the proposed Final Judgment does not in any way limit awarding authorities' ability to establish bidding requirements for contractors. If the awarding authority decided that a regulated bidding system which prevented post-filing negotiations between contractors and subcontractors was appropriate, it could insist on it, and the contractors and subcontractors could comply without violating the decree.

Section VI.B further states that defendant is not enjoined from maintaining a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, so long as use of the services it provides is voluntary. This provision ensures that the proposed Final Judgment does not prohibit SMCA from operating a bid depository so long as the services provided are voluntary and do not prohibit negotiations between general and specialty contractors.

Sections VII and VIII ensure that full notice of the requirements of the Final Judgment is given to all of SMCA's officers, directors, managers, and members.

Section IX requires SMCA to establish and implement a plan for monitoring compliance with the terms of the proposed Final Judgment. SMCA is also required to file with the Court and the United States within ninety (90) days after date of entry of the Final Judgment, an affidavit explaining the steps it has taken to comply with the Final Judgment. SMCA is required to file similar affidavits each year the Final Judgment is in effect.

Section XII makes the Final Judgment effective for ten (10) years from the date of its entry.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the Final Judgment will neither impair not assist the bringing of any private antitrust damage action. Under Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgment

The APPA provides that any person wishing to comment on the proposed Final Judgment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register.** Any person who believes that the proposed Final Judgment should be modified, may submit written comments within the statutory 60-day period to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, United States Department of Justice, 450 Golden Gate Avenue, 16th Floor, Box 36046, San Francisco, California 94102 (Telephone: 415/556-6300). These comments and the Department's response to them will be filed with the Court and published in the **Federal Register.** All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. Further, Section XI provides that the Court retains jurisdiction over this action and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI

Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgment considered by the Antitrust Division was a full trial on the merits and on relief. The Division considers the proposed Final Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it

provides appropriate relief against the violations alleged in the Complaint.

The effect of the proposed Final Judgment should be to eliminate entirely the alleged restraints on competition that are set forth in the Complaint. In particular, under the proposed Final Judgment, general contractors and specialty contractors and material suppliers can no longer agree to limit negotiations on the terms of sub-bids with each other. General contractors will be able freely to consider bids from any and all capable specialty contractors and material suppliers. Moreover, specialty contractors will be prohibited from notifying bidders whose bids are considerably lower than the next lower bids. In sum, price competition among general contractors and among specialty contractors and materials suppliers will be facilitated, to the benefit of awarding authorities and, indirectly, to the benefit of federal and state taxpayers. The proposed Final Judgment adequately redresses all aspects of the government's Complaint in this case.

The Division also considered including in the proposed Final Judgment an injunction against the specialty contractor associations' practice of tabulating and disseminating the prices contained in bids submitted to their depositories. Such exchanges of price information can be procompetitive in that, by providing firms with information about competitors, they ultimately can help firms identify ways in which to lower their costs. But in some circumstances where a market is otherwise prone to collusion, such exchanges of price information can be used to police pricing agreements and can have an anticompetitive effect. The Division chose not to impose an injunction against such information exchange in this case because it cannot be predicted that an exchange of information, on balance, would be anticompetitive in this market after entry of the proposed Final Judgment with its injunctions against anticompetitive practices by the depositories. The Division concluded that such an injunction is not now necessary to restore full and vigorous competition to the affected markets.

VII

Determinative Materials and Documents

The United States considered no materials or documents to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed pursuant to the APPA, 15 U.S.C. 16(b).

Dated:

Respectfully submitted,

Robert J. Staal,

Phillip H. Warren,

Howard J. Parker,

Attorneys, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, Telephone: 415/556-6300.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87-58)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC).

DATE AND TIME: July 21, 1987, 9 a.m. to 5:30 p.m., and July 22, 1987, 8:30 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 5026, Federal Building 6, 400 Maryland Avenue SW., Washington, DC 40546.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code F, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8335.

SUPPLEMENTARY INFORMATION: The NAC was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Mr. Daniel J. Fink and is composed of 25 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, life sciences, space applications, space and earth science, space systems and technology, and history, as they relate to NASA's activities.

This meeting will be open to the public up to the seating capacity of the room, which is approximately 60 persons including Council members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open.

Agenda

July 21, 1987

9 a.m.—Introductory Remarks and Overview.
9:45 a.m.—Space Transportation Program.
10:45 a.m.—Space Station Program.
12:45 p.m.—Space Operations Program.
1:30 p.m.—Space Technology Program.
2:15 p.m.—Space Science and Applications Program.
4 p.m.—Aeronautics Program.
4:45 p.m.—NASA Institution.
5:30 p.m.—Adjourn.

July 22, 1987

8:30 a.m.—Committee Reports.
9:30 a.m.—Center Science Assessment.
10:15 a.m.—Office of Exploration.
11 a.m.—Upper Atmosphere Research Satellite Update.
11:15 a.m.—Review of International Solar Terrestrial Physics Program.
2 p.m.—New Business.
3 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

June 30, 1987.

[FR Doc. 87-15420 Filed 7-7-87; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-440, 50-441]

Receipt of Petition for Director's Decision Under 10 CFR 2.206; Cleveland Electric Illuminating Co., et al., Perry Nuclear Power Plants, Units 1 & 2

Notice is hereby given that, in a Petition pursuant to 10 CFR 2.206 dated June 5, 1987, Toledo Coalition for Safe Energy, Susan B. Carter, Sunflower Alliance, Inc. and Steven Sass (Petitioners) requested that operation of the Perry Nuclear Power Plants (Perry facility) of the Cleveland Electric Illuminating Company, et al., (Licensees) be suspended immediately pending full consideration of certain issues raised in the Reed Report prepared in 1975 by a team of General Electric engineers. The Petition alleged that the Reed Report identified problems with the General Electric BWR 6/Mark III containment boiling water reactor, specifically: (1) Technology to fix problems would not be available; (2) the design is unusually subject to earthquake hazards; (3) plant

workers might be unusually subject to radiation exposures; (4) safety systems contained in the design had not been subjected to adequate testing; and (5) inadequate or undertested metals could create defectively performing systems.

In addition to seeking an immediate suspension of facility operation, the Petition requested an exhaustive review by an independent study group of the applicability of the Reed Report and associated General Electric internal data to the Perry facility's design and operation.

The Petition, as well as an accompanying Motion to Reopen the Record, are being treated pursuant to 10 CFR 2.206 of the Commission's regulations, and accordingly, appropriate action will be taken on the request within a reasonable time. With respect to Petitioner's request for an immediate suspension of the operation of the Perry facility, the Petitioner was notified by letter dated June 30, 1987, that, based on the staff's review of the Reed Report, there is no need to take such action. Copies of the Petition and Motion are available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Local Public Document Room for the Perry Nuclear Power Plant located at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Bethesda, Maryland, this 30th day of June, 1987.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 87-15473 Filed 7-7-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-438 and 50-439]

Tennessee Valley Authority, Bellefonte Nuclear Plant, Units 1 and 2; Order Extending Construction Completion Dates

Tennessee Valley Authority is the current holder of Construction Permit Nos. CPPR-122 and CPPR-123, issued by the Atomic Energy Commission [1] on December 12, 1974, for construction of the Bellefonte Nuclear Plant, Units 1 and 2. These facilities are presently under construction at the applicant's site on a peninsula at Tennessee River Mile (TRM) 392 on the west shore of Guntersville Reservoir about 6 miles east—northeast of Scottsboro, Alabama.

On September 30, 1986, the Tennessee Valley Authority (TVA, the applicant) filed a request for an extension of the completion dates. The extension has been requested because construction has been delayed because the revised power usage projections by the TVA indicate that the power from the Bellefonte Units 1 and 2 will not be needed until the early to mid-1990's.

The NRC staff has concluded that good cause has been shown for the delays, the extension is for a reasonable period, and that this action involves no significant hazards consideration, the bases for which are set forth in the staff's evaluation of the request for extension dated September 30, 1986.

The NRC staff has prepared an environmental assessment and finding of no significant impact which was published in the **Federal Register** on May 6, 1987 (52 FR 16963). Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion dates will have no significant impact on the environment.

The applicant's letter dated September 30, 1986, and the NRC staff's letter and safety evaluation on the request for extension of the construction permits, dated June 30, 1987, are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and the local Public Document Room, Scottsboro Public Library, 1002 South Broad Street, Scottsboro, Alabama 35668.

It is hereby ordered that the latest completion date for Construction Permit No. CPPR-122 is extended to July 1, 1994, and the latest completion date for Construction Permit No. CPPR-123 is extended to July 1, 1996.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 30th day of June 1987.

James G. Keppler,

Director, Office of Special Projects.

[FR Doc. 87-15471 Filed 7-7-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-390 and 50-391]

Tennessee Valley Authority, Watts Bar Nuclear Plant, Units 1 and 2; Order Extending Construction Completion Dates

Tennessee Valley Authority is the current holder of Construction Permit Nos. CPPR-91, and CPPR-92, issued by the Atomic Energy Commission [1] on January 23, 1973, for construction of the Watts Bar Nuclear Plant, Units 1 and 2. These facilities are presently under construction at the applicant's site on the west branch of the Tennessee River approximately 50 miles northeast of Chattanooga, Tennessee.

On January 29, 1987, the Tennessee Valley Authority (the applicant) filed a request for an extension of the completion dates. The extension has been requested because construction has been delayed by the following events:

1. Delays resulting from analysis and modifications required to resolve concerns raised in TVA's Employee Concern Program;
2. Delays resulting from completion of the welding evaluation program;
3. Delays resulting from the reallocation of certain resources to the restart programs for TVA's Sequoyah and Browns Ferry Nuclear Plants.

The NRC staff has concluded that good cause has been shown for the delays, the extension is for a reasonable period, and that this action involves no significant hazards consideration, the bases for which are set forth in the staff's evaluation of the request for extension dated January 29, 1987. However, the staff believes that the requested construction completion dates are optimistic considering the issues and problems that must be resolved before an operating license can be issued.

The NRC staff has prepared an environmental assessment and finding of no significant impact which was published in the **Federal Register** on March 13, 1987 (52 FR 7849). Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion dates will have no significant impact on the environment.

The applicant's letter dated January 29, 1987, and the NRC staff's letter and safety evaluation of the request for extension of the construction permits, dated June 30, 1987 is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

It is hereby ordered that the latest completion date for Construction Permit No. CPPR-92 is extended from March 1,

[1] Effective January 19, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and permits in effect on that day were continued under the authority of the Nuclear Regulatory Commission.

[1] Effective January 19, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and permits in effect on that day were continued under the authority of the Nuclear Regulatory Commission.

1987 to September 1, 1988, and the latest completion date for Construction Permit No. CPPR-92 is extended from September 1, 1987, to January 1, 1990.

Dated at Bethesda, Maryland, this 30th day of June 1987.

For the Nuclear Regulatory Commission.

James G. Keppler,

Director, Office of Special Projects.

[FR Doc. 87-15472 Filed 7-7-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24668; File No. SR-Amex-87-8]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange Inc., Relating to Increased Maximum Order Sizes on the PER and AMOS Systems

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), and rule 19b-4 thereunder, the American Stock Exchange, Inc. ("Amex") submitted, on March 3, 1987, copies of a proposed rule change that would expand the Amex Options Switching (AMOS) and Post Execution Reporting (PER) Systems by increasing the size of contracts to be entered through AMOS from 10 to 20, and increasing the size of eligible market and marketable limit orders from 1,000 to 2,000 shares on PER.

Notice of the proposed rule change, together with its terms of substance, was given by the issuance of a Commission release (Securities Exchange Act Release No. 24425, May 5, 1987) and by publication in the **Federal Register** (52 FR 17865, May 12, 1987). No comments were received regarding the proposal.

The PER and AMOS systems provide Amex member firms with the means to route electronically equity and options orders, up to the specified volume limits, to the post where the security is traded. Following the execution of an electronically routed order, the member receives an execution report back through the system. The intended purpose of the system has been to facilitate the transmission, execution and reporting of small orders, thereby increasing the capacity of the equity and options floors to handle order flow. In its proposal, the Amex noted that significant increases in volume and average order size in both equities and options necessitate the expansion of the and PER AMOS order routing parameters.[1] Further, the Amex stated that recent enhancements would enable the specialist to handle the increased order flow being routed through the systems.[2]

After careful review, the Commission has concluded that the increased order routing parameters proposed by the Amex are justified due to the substantial increase in order flow. Order parameters that fail to keep pace with changes in the number of shares constituting small and average sized orders could prevent the PER and AMOS systems from achieving their central purpose, to facilitate the handling of small orders, by allowing an increasingly smaller percentage of those orders to be routed through these systems. The Commission also believes that the systems enhancements to PER and AMOS described by Amex will aid specialist in handling the larger order flow that will be routed through the system as a result of the increased parameters. Finally, the Commission notes that proposals to increase the maximum order size for routing-only systems such as PER and AMOS do not present the same regulatory issues presented by proposals to increase the order size maximum of automatic execution systems. In fact, such modifications proposing reasonable limits on maximum order size for routing purposes only can benefit the investing public by facilitating the routing and subsequent execution of orders and by allowing for a faster and more accurate system of transaction reporting and settlement. The Commission therefore finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) and section 11A(a)(1)(B) and the rules and regulations thereunder, in that it will foster cooperation and coordination with persons engaged in facilitating transactions in securities, and will result in more efficient and effective market operations.

It is therefore ordered, pursuant to section 19(b) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 1, 1987

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-15447 Filed 7-7-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24665; File No. SR-BSE-86-5]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Boston Stock Exchange, Inc.

The Boston Exchange, Incorporated ("BSE" or "Exchange") submitted on November 12, 1986 and April 3, 1987, copies of a proposed rule change and an amendment pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder to revise its schedule of arbitration fees, and adopt a new rule, on a one year experimental basis, requiring contesting parties to an arbitration hearing to exchange documents ten days prior to the scheduled hearing date.[1]

The Exchange proposes to revise its schedule of arbitration fees set forth in Chapter XXXII, section 31 (Schedule of fees for member controversies) of the BSE rules. The proposed amendments would increase the required deposit by claimants in non-member controversies from $300 to $400 where the amount in controversy is between $10,000 and $20,000.[2] Where the amount in controversy is between $20,000 and $50,000, the deposit fee would be reduced from the current $500 fee to $400. The current $500 fee would remain unchanged for amounts in controversy between $50,000 and $100,000. The deposit fee for claims where the amount in controversy is between $100,000 and $500,000 would be $750. The Exchange would impose a new $1,000 deposit fee for all cases exceeding $500,000.[3]

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[1] *See* Securities Exchange Act Release No. 24425 (May 5, 1987), 52 FR 17865. In its filing, the Amex reported that since the last such expansion of the PER and AMOS Systems, the average size per trade in equities has increased from 800 to 1,300 shares, and the average options trade has increased from 17 to 19 contracts. Further, average daily volume has expanded from 8,224,988 shares and 153,722 contracts in 1983 to 14,892,249 shares and 309,058 contracts as of January 29, 1987. *Id.*

[2] In particular, the Amex cited the introduction of a "touch screen" execution capability for the specialist receiving an order through the systems, and increased enhancements in the automatic reporting of trades executed through the systems that allows reporting on a more timely basis.

[1] The BSE filed Amendment No. 1 to its proposed rule change April 3, 1987.

[2] Currently, Chapter XXXII, Section 31 provides that a $300 deposit is required where the amount in controversy is between $10,000 and $20,000; $500 where the amount in controversy is between $20,000 and $100,000; and $750 for all cases exceeding $100,000.

[3] We note that under the current rules, $750 is the maximum fee required.

Finally, the proposed amendments to Rule 630(c) would increase the maximum fee allowable in disputes which do not involve or disclose a money claim from $750 to $1,000.

The proposed amendments to Chapter XXXII, section 33 would increase the required deposit per hearing in cases involving member controversies from $100 to $200 where the amount in controversy is $5,000 or less; [4] from $350 to $500 where the amount in controversy in between $5,000 and $100,000; and from $550 to $750 where the amount in controversy is $100,000 or more. In addition, where the controversy does not involve a money claim the Exchange will determine the required deposit, although the maximum deposit fee allowable in these cases is $1,000.

The Exchange also proposes to adopt new Chapter XXXII, section 34 that would require contesting parties to an arbitration to exchange documents in their possession that are intended to be introduced at the arbitration hearing at least 10 days prior to the scheduled hearing date. Under the proposed rule, the arbitrators can exclude from the arbitration any document not so exchanged. The BSE has indicated that it intends to implement the new rule on a one year experimental basis.

Notice of the proposed rule change together with its terms of substance was given by issuance of a Commission release (Securities Exchange Act Release No. 24438, May 8, 1987) and by publication in the *Federal Register* (52 FR 18631 May 18, 1987).

Regarding the revised schedule of arbitration fees, section 6(b)(4) of the Act requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities. The Exchange has indicated in its filing that the purpose of the revisions to its schedule of arbitration fees is to conform it to the Uniform Code of Arbitration.[5] Moreover, the BSE noted that since it refers many of the arbitration filings brought to it to other self-regulatory organizations ("SROs") conformity with the Uniform Code of Arbitration is significant to ensure consistent procedures among the SROs The Commission believes that the proposed revisions to the BSE's schedule of fees are reasonable. In those situations where the proposal would result in a fee increase, the Commission believes that the increase will help the BSE defray a greater portion of the costs it incurs in providing an arbitration facility to its members and the public.

With regard to proposed Chapter XXXII, section 34 requiring a prehearing exchange of documents, the BSE has indicated in its filing that its objective is to save arbitrator time by reducing the number of session hours required per hearing as well as avoid unnecessary hearing delays and recesses often associated with the introduction of unexpected evidence at an arbitration hearing.[6] The BSE believes that the proposed rule will result in more efficient and expeditious arbitration hearings. After careful review, the Commission has concluded that the proposed rule is a reasonable effort by the BSE to improve its arbitration process by making arbitration hearings more cost-efficient and less time consuming. We note that the rule simply gives the arbitrator the power to exclude evidence from the arbitration not exchanged at least ten days prior to the hearing rather than requiring, in all cases, that violations of the rule result in an exclusion of documents. In addition, it is clear that the rule would not be applicable in cases where the arbitration hearing has been set within 10 days on an expedited basis.

The Commission nevertheless believes that because of certain concerns over the practical applications of the rule and its effect on the arbitration process, the proposed rule should be approved on a one year pilot basis. As a pilot program the Commission and Exchange will be able to analyze the rule to determine its effectiveness and discover any problems encountered in implementing the rule.[7]

Based on the above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and is, hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: June 30, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-15492 Filed 7-7-87; 8:45 am]

BILLING CODE 8010-01-M

[4] The Exchange indicates that this shall also be the fee for non-member claimants who are not public customers.

[5] We noted that the Commission recently approved similar proposed rule changes submitted by both the American Stock Exchange, Inc. and the New York Stock Exchange, Inc. ("NYSE") that made the same conforming amendments to their schedules of arbitration fees *See*, Securities Exchange Act Release Nos. 24379, April 22, 1987 52 FR 15577 and 24489, May 20, 1987 52 FR 20179.

[6] The Commission recently approved, on a one year pilot basis, an identical NYSE rule that requires parties to an arbitration hearing to exchange documents 10 days prior to the scheduled hearing date. *See*, Securities Act Release No. 24489, May 20, 1987, 52 FR 20179

[7] In this regard, the NYSE, in its filing requesting approving of its pre-hearing exchange of documents rule, indicated that it will evaluate the effectiveness of the rule and submit to the Commission the results of such analysis prior to the pilot's conclusion, if it decides to propose adoption of the rule on a permanent basis. The BSE has indicated that it will utilize the results of the NYSE's analysis to make a determination of the feasibility of adopting its rule on a permanent basis

[8] 17 CFR 200-30.3.

[Release No. 34-24662; File No. SR-CBOE-87-24]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options, Exchange, Inc., Relating to Long Term Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 15 U.S.C. 78s(b)(1) of the Securities Exchange Act of 1934 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on June 9, 1987, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

Terms of Option Contracts

Rule 24.9. (a), (b) and (c) No change.

(d) Long Term Option Series. The Exchange may list long term index option series pursuant to Exchange Rule 5.8.

No further change.

Long Term Option Series

Rule 5.8. Notwithstanding conflicting language in any other Exchange rule, the Exchange may list option series that expire 12 to 24 months from the time they are listed. There may be up to four additional expiration months. Strike

price interval, bid/ask differential and continuity rules shall not apply to such option series until the time to expiration is less than twelve months for index options or less than nine months for equity options. When listed, such option series will be opened for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations will be posted for such option series until they are opened for trading.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements appears below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to respond to requests from institutional customers to list long term options. Such options protect portfolios from long term market moves with a known and limited cost. They would be an alternative to insuring portfolios with futures positions. The statutory basis for the proposed rule change is section 6(b)(5) of the Act, in that the rule change will facilitate transactions in listed option contracts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition, rather it is designed to promote competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 29, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 30, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-15493 Filed 7-7-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24666; File No. SR-CBOE-85-31]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc; Order Approving Proposed Rule Change

On July 25, 1985, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to prohibit floor brokers from exercising time discretion on market or marketable limit orders, in the absence of a "not held" instruction[3] and under normal market conditions.

The proposed rule change was noticed in Securities Exchange Act Release No. 22386 (September 6, 1985) 50 FR 37753 (September 17, 1985). A comment letter concerning the proposal was submitted by the New York Exchange, Inc. ("NYSE") in response to this solicitation.[4]

CBOE Rule 6.75 (Discretionary Transactions) prohibits a floor broker from executing or causing to be executed any order with respect to which the floor broker has discretion as to the class of options, the number of contracts, or whether the transaction shall be one of purchase or sale. The present CBOE proposal would amend this rule by adding the further prohibition that a floor broker may not hold onto marketable non-discretionary agency orders, but rather must execute such orders immediately at the best price or prices available, assuming normal market conditions. The CBOE states that the proposed rule change is intended to prohibit floor broker from working marketable non-discretionary agency orders against other orders held by them. The CBOE also states that the proposal, however, would allow a floor broker to exercise time discretion in "unusual market conditions, including where [the floor broker] believes the quoted market is insufficient," [5] in order to fulfill his obligation of due diligence to customer orders.[6]

The NYSE Letter expressed concern that language in the CBOE's rule filing concerning when a floor broker may properly exercise time discretion with respect to marketable agency orders could be incorrectly interpreted to mean that the due diligence required of a floor broker is limited to cicumstances of unusual market conditions. The NYSE stated that in its opinion "even the executive of a 'garden variety' market order requires a broker to exercise judgment and, therefore, discretion as to time." [7]

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] CBOE Rule 6.53 paragraph (g), defines a "not held" order as one which bears any qualifying notation giving discretion as to the price or time at which such order is to be exectued.

[4] *See* letter from James E. Buck, Secretary, NYSE, to John Wheeler, Secretary, SEC, dated October 10, 1985 ("NYSE Letter").

[5] *See* CBOE Rule filing at 3.

[6] CBOE Rule 6.73, paragraph (a), requires a floor broker handling an order to use due diligence to execute the order at the best price(s) available to him, in accordance with the other rules of the Exchange.

[7] NYSE Letter, *supra* note 4, at 1-2.

In response to the NYSE comment, the CBOE represented [8] that the proposed rule change is not intended to limit the applicability of the due diligence requirement imposed on floor brokers by CBOE Rule 6.73.[9] Rather, the proposal is aimed at preventing a floor broker from exercising time discretion solely for his advantage, by holding an immediately executable order until such time as the floor broker can use the order as the contra-side to other orders represented by the broker. The CBOE states that it will continue to interpret its due diligence rule to require floor brokers to employ their best judgment under all market conditions to execute marketable agency orders at the best price or prices available to the broker.

The Commission has reviewed carefully the language of the proposed CBOE rule change and believes that it does not abrogate the due diligence requirement imposed on CBOE floor brokers by CBOE Rule 6.73. In addition, the CBOE has represented that adoption of the proposed rule change will affect neither its interpretation nor enforcement of its due diligence rule.[10] In view of these assurances, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirement of section 6,[11] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Dated: June 30, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-15494 Filed 7-7-87; 8:45 am]

BILLING CODE 8010-01-M

[8] Telephone conversation between Holly H. Smith, Special Counsel, Division of Market Regulation, SEC, and Frederic M. Krieger, Associate General Counsel, CBOE, on June 9, 1987.

[9] *See* note 6, *Supra.*

[10] In this regard, the Commission expects that CBOE market makers will execute customer market orders in a manner consistent with their fiduciary obligations to their customers. *Cf. In re* Bateman, Eichler, Hill Richards, Inc., 30 S.E.C. Doc. 155, *aff'd.* 757 F.2d 1,066 (9th Cir. 1985).

[11] 15 U.S.C. 78f (1982).

[12] 15 U.S.C. 78s(b)(2) (1982).

[13] 17 CFR 200.30-3(a)(12)(1985).

[Release No. 34-24661; File No. SR-MSRB-87-3]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

On May 8, 1987, the Municipal Securities Rulemaking Board ("MSRB") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend Rules G-12(f) and G-15(d) on book entry delivery.

The proposed rule change exempts from the application of Rules G-12(f)(ii) and G-15(d)(iii) [1] transactions in depository-eligible, same-day fund municipal securities through June 30, 1988. The Depository Trust Company ("DTC") has informed the MSRB that it plans to commence on July 10, 1987, a pilot program that will provide depository services for some same-day funds securities, and has requested the MSRB to provide a temporary exemption from the rules during the pilot phase of the program to allow dealers to become familiar with program operations prior to being required to submit all such transactions to the system.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 24500 (52 FR 20654, June 2, 1987). No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, to the requirements of section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 30, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-15495 Filed 7-7-87; 8:45 am]

BILLING CODE 8010-01-M

[1] Rule G-12(f)(ii) requires book-entry settlement if "a transaction submitted to one or more registered clearing agencies for comparison . . . has been compared successfully, and if such transaction involves municipal securities which are eligible for deposit at one or more [registered] securities depositories . . . in which both [dealers (or their clearing agents for the transaction)] are members . . ."

Rule G-15(d)(iii) prohibits dealers from granting delivery versus payment or receipt versus payment privileges on a customer transaction "in any municipal security which is eligible for book-entry settlement through the facilities of a [registered] clearing agency . . ." in which both the dealer and the customer (or their clearing agents for the transaction) are members unless book-entry settlement is used.

[Release No. 34-24652; File No. SR-PHLX-87-17]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

On April 27, 1987, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to modify the hours business trading may be conducted in foreign currency options.

The proposed rule change was noticed in Securities Exchange Act Release No. 24439 (May 11, 1987), 52 FR 18634 (May 18, 1987). No comments were received on the proposed rule change.

The Phlx states that the purpose of the proposed rule change is to extend trading hours in foreign currency options. The Phlx proposes to add an evening trading session from 7:00 p.m. to 11:00 p.m. Sundays through Thursdays. For virtually all purposes, the regular daytime trading session and the preceding evening session will be treated as parts of a single trading day. Thus, with the addition of the evening session, each trading day will be deemed to commence at 7:00 p.m. and continue until 2:30 p.m. the following afternoon. For example, open interest and volume will be calculated at the end of the regular daytime trading session reflecting activity from the entire trading day (*i.e.*, the prior evening session plus the regular daytime trading session). Margin requirements will be based on a net calculation of positions created throughout the entire trading day (*i.e.*, the daytime trading session plus the prior evening session). The Exchange contemplates that evening trading sessions will not necessitate any changes in current procedures respecting options exercises or assignments. The Exchange's real time trade comparison system will be utilized in all trading sessions and augmented computer processing of evening trading sessions transactions will be initiated

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1986).

by the Exchange and Options Clearing Corporation ("OCC"), respectively. In its rule filing, the Phlx indicated that evening sessions trading in foreign currency options were added to accommodate market interest in the Far East. The Phlx believes that evening trading sessions will provide the Exchange with a significant real time opportunity to meet the exchange rate risk protection and related hedging needs of Far East manufacturing, banking, and other commercial firms during Far East business hours.

The Phlx contends that the statutory basis for the proposed rule change is section 6(b)(5) of the Act in that it is designed to promote the maintenance of fair and orderly markets by allowing the Exchange to offer an organized trading market during Far East business hours. No such market is available currently. In addition, provision of such a market during Far East business hours should further the public interest and promote the protection of investors desiring to use the options markets during these hours. Finally, the interbank currency markets operate on a 24-hour basis. Hence, persons that establish currency options during U.S. business hours are at risk that the underlying markets may move against them after the Phlx market closes. Addition of an evening trading session will protect investors and the public interest by providing an opportunity for daytime trading session participants to better protect themselves against 24-hour currency market fluctuations.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[3] and the rules and regulations thereunder. More specifically, the Commission agrees that the proposed rule change will allow the Phlx to offer its members an organized trading market during Far East business hours. As a result, investors will have further opportunity to protect themselves against 24-hour currency market fluctuations. The Phlx also will use its normal surveillance procedures to monitor trading during the evening session. In addition, the Phlx will have a floor official present to address trading problems that arise during evening trading hours and at least one person from the Exchange's Surveillance Department will be present to investigate any unusual trading activity.

The Commission also believes that the proposal creates no significant operational or clearing problems for member firms. Member firms' margin and capital requirements will not be affected in any material way. The Phlx's real time trade comparison system will be used for all trading and the Phlx, as well as OCC, will provide some additional computer processing for evening trade transactions.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: June 29, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-15496 Filed 7-7-87; 8:45 am]

BILLING CODE 8010-01-M

[3] 15 U.S.C. 78f (1982).

[4] 15 U.S.C. 78s(b)(2) (1982).

[5] 17 CFR 200.30-3(a)(12) (1986).78s(b)(2) (1982).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order No. 87-7-6; Docket 44766]

Application of Skagway Air Service, Inc., for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 87-7-6), Docket 44766.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Skagway Air Service, Inc., fit and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation.

DATE: Persons wishing to file objections should do so no later than July 17, 1987.

ADDRESSES: Objections and answers should be filed in Docket 44766 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Mary Catherine Terry, Air Carrier Fitness Division, (P-56, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2343.

Dated: July 2, 1987.

Vance Fort,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-15485 Filed 7-7-87; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-87-14]

Petition for Exemption; Summary and Dispositions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of disposition of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: August 7, 1987.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW.,

Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 1, 1987.

Leonard R. Smith,

Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
25221	Dowty Rotol Limited	14 CFR 145.71 and 145.73	To allow petitioner, pursuant to the foreign repair station certificate for which it is concurrently applying, to perform warranty and other maintenance work on propellers, landing gear, and accessories on U.S.-registered aircraft which it has manufactured, without limitation as to where such aircraft operate.
24541	Boeing Commercial Airplane Co	14 CFR 91.45	To allow petitioner to conduct ferry flights with one engine inoperative on its turbine-engine-powered large transport category airplanes without obtaining a special flight permit.
12638	Air Transport Association of America	14 CFR 121.99 and 121.351(a)	To allow certain petitioner members to operate turbojet aircraft on certain oceanic routes between the northeastern U.S. and the San Juan ARTCC boundary, with one of two installed HF communications systems inoperative at the time of departure.
25297	NPA, Inc	14 CFR 135.337 and 135.339	To allow petitioner to use certain instructor pilots of British Aerospace to train petitioner's initial cadre of pilots in the British Aerospace Jetstream 31 (BA-3100A) type airplane without holding U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart H of Part 135 of the FAR. *Granted, June 15, 1987.*
25155	SNECMA	14 CFR 145.73(a)	To allow petitioner to repair CFM56 engines and their components for United States air carriers operating in the U.S. and overseas. *Granted, June 15, 1987.*
25251	FFV Aerotech	14 CFR 145.71 and 145.73(a)	To allow petitioner to be certificated as a foreign repair station, and subsequently operate with no geographical limitations to perform maintenance on U.S.-registered SAAB SF-340 aircraft. *Granted, June 15, 1987.*
25219	Presidential Airways, Inc	14 CFR 121.371(a) and 121.378	To allow petitioner to have warranty repair work on its BAe 146 aircraft, related avionics, and components performed outside the United States by the original equipment manufacturers. *Granted, June 12, 1987.*
25241	Rolls-Royce, plc	14 CFR 43.3(a)	To allow petitioner to operate as an FAA-certificated repair station within the United Kingdom with no geographical limitations for the performance of maintenance and approval for return to service of Rolls-Royce engines used on U.S.-registered aircraft. *Granted, June 12, 1987.*
23908	Piedmont Airlines, Inc	14 CFR 121.371(a)	To allow petitioner to purchase components, goods, and services from original equipment manufacturers in support of its Boeing 737-300 and 767-200ER aircraft. *Granted, June 10, 1987.*
25166	American Trans Air, Inc	14 CFR 121.371(a) and 121.378	To allow petitioner to utilize Rolls Royce Ltd, Derby, England as an overhaul and repair station for its operated Rolls Royce RB-211-22B series engines and/or components. *Granted, June 8, 1987.*
22270	Executive Air Fleet Corp	14 CFR 135.25(b) and (c)	To allow petitioner to operate under Part 135 without having the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in its operations specifications, subject to certain conditions and limitations. *Granted, June 10, 1987.*
22641	ERA Helicopters, Inc. d/b/a Jet Alaska	14 CFR 121.391(a)(1)	To allow petitioner to conduct medical evacuation flights using Convair 580 airplane configured with more than nine passenger seats, without providing a flight attendant. *Granted, June 5, 1987.*
25077	Pocono Airlines, Inc	14 CFR 135.429(a)	To allow petitioner to employ Societe Nationale Industrielle Aerospatiale, Sasmat Rousseau Aviation, Turbomeca, and Ratier-Figeac, all located in France, and Lucas Aerospace, Ltd., located in England, to overhaul and repair its Nord 262 aircraft components, accessories, engines, and propellers even though the companies and their employees performing that work do not hold appropriate U.S. certificates. *Granted, June 4, 1987.*
24715	American Cyanamid Co	14 CFR 91.191(a)(4), 135.165(a)(1), 135.165(a)(5), 135.165(a)(6), 135.165(b)(5), 135.165(b)(6) and 135.165(b)(7).	To allow petitioner to continue to operate its Grumman Aircraft Corportion Gulfstream registration number N750AC and Gates Learjet Corporation Model 55 registration numbers N740AC and N760AC, with only one long-range navigation system and one high-frequency communication system. *Granted, June 8, 1987.*

[FR Doc. 87-15419 Filed 7-7-87; 8:45 am]
BILLING CODE 4910-13-M

Federal Railroad Administration

[FRA Waiver Petition Docket No. RSOR-86-5]

Petition for Relief from the Requirements of Blue Signal Protection of Workmen; New Jersey Transit Rail Operations, Inc.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that New Jersey Transit Rail Operations, Inc. (NJTR) has petitioned the Federal Railroad Administration (FRA) for permanent relief from the requirements of 49 CFR 218.25 and 218.27. These sections establish minimum requirements for the protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment, on maintracks and on other tracks, respectively, whose activities require them to work on, under, or between such equipment and subject them to the danger of personal injury posed by any movement of such equipment. Train and yard crews are excluded from such protection except when assigned to work on rolling equipment that is not part of the train or yard movement they have been called to operate.

1. South Amboy, New Jersey

The NJTR requests a waiver to allow that a car inspector and the locomotive cutter (mechanical department employees) be considered a member of the train crew while participating in the locomotive change process on the main track at South Amboy, New Jersey, and thus not be subject to blue signal protection. Such car inspectors and locomotive cutters would, however, be provided the protections normally provided a train crewmember.

2. Hoboken, New Jersey

The NJTR requests a waiver to allow for blocking devices at the Hoboken Terminal to be applied to controls governing signals on Tracks 1, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 6 main, 2 main, 8 Hill, T, Q, N, and A, as well as the Extension Track, in lieu of the compliance requirements of § 218.27.

The NJTR asserts that this alternative protection does not compromise safety

and requests these waivers in order to avoid significant train delays.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning these proceedings should identify the appropriate Docket Number (Docket Number RSOR-86-5) and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before August 21, 1987, will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on June 26, 1987.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 87-15453 Filed 7-7-87; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 1, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0127
Form Number: 1120-H
Type of Review: Revision
Title: U.S. Income Tax Return for Homeowners Associations
Description: Form 1120-H is used by homeowners associations to report their income subject to tax and compute their correct income tax liability. This information is used by IRS to determine the taxpayer's correct tax liability and to use for general statistics.
Respondents: Businesses
Estimated Burden: 114,240 hours

OMB Number: 1545-0139
Form Number: 2106
Type of Review: Revision
Title: Employee Business Expenses
Description: Internal Revenue Code section 62 allows employees to deduct their business expenses to the extent of reimbursement, in computing Adjusted Gross Income. Expenses in excess of reimbursement are allowed as an itemized deduction. Meals and entertainment in excess of reimbursement are allowed to the extent of 80% of adjusted gross income. Form 2106 is used to figure these expenses.
Respondents: Individuals or households
Estimated Burden: 8,020,650 hours

OMB Number: 1545-0790
Form Number: 8082
Type of Review: Revision
Title: Notice of Inconsistent Treatment or Amended Return (Administrative Adjustment Request (AAR))
Description: Internal Revenue Code sections 6222 and 6227 require partners to notify IRS by filing Form 8082 when they (1) treat partnership items inconsistent with the partnership's treatment (6222) and (2) change previously reported partnership items (6227). The data is used to verify consistent treatment of partnership items between partners and partnerships.
Respondents: Individuals or households, Farms, Businesses
Estimated Burden: 12,427 hours
Clearance Officer: Garrick Shear (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 87-15428 Filed 7-7-87; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 2, 1987.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0072
Form Number: 2119.
Type of Review: Revision.
Title: Sale or Exchange of Principal Residence.
Description: Individuals who sell their principal residence at a gain use Form 2119 whether or not they purchase another principal residence. The form is also used by those taxpayers 55 years of age or older who elect to exclude the gain on the sale of their principal residence. The information is used to help verify whether or not the gain or exclusion of gain has been correctly reported.
Respondents: Individuals or households
Estimated Burden: 585,290 hours

Clearance Officer: Garrick Shear (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer

[FR Doc. 87-15459 Filed 7-7-87; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Electronic Filing Communications/ Software Industry Briefing

AGENCY: Internal Revenue Service Treasury.

ACTION: Notice of Electronic Filing Communications/Software Industry Briefing.

SUMMARY: This document provides notice that an Electronic Filing Communications/Software Industry Briefing will be conducted by the Office of Input Processing, Tax System Redesign, Internal Revenue Service.

DATES: The Briefing is scheduled for July 21, 1987, beginning at 8:30 a.m. and continuing until 3:00 p.m. It is requested that notification of attendance be given no later than July 17, 1987.

ADDRESS: The briefing will be held in the IRS Main Auditorium, 7400 Corridor, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Eileen McCrady, Tax System Redesign, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 4310, Ariel Rios Federal Building, Washington, DC 20224. Telephone 202-377-9392 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Possible future communications and software requirements for electronic filing will be discussed. Seating capacity is limited; attendees will be accommodated on a first-come, first-served basis.

Donald R. Hale,

Acting Director, Office of Input Processing.

[FR Doc. 87-15501 Filed 7-7-87; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaina Norden, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: July 1, 1987.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits.

2. Information from Remarried Widow/er.

3. VA Form 21-4103.

4. This information is required to assure that a child meets the eligibility requirements for disability pension benefits and to establish those benefit rates.

5. On occasion.

6. Individuals or households.

7. 22,000 responses.

8. 7,333 hours.

9. Not applicable.

1. Department of Veterans Benefits.

2. Application for Reimbursement of Headstone or Marker Expenses.

3. VA Form 21-8834.

4. This information is used by any person who purchased and paid for a headstone marker, or additional engraving on behalf of a deceased veteran or service person.

5. On occasion.

6. Individuals or households.

7. 41,400 responses.

8. 6,900 hours.

9. Not applicable.

[FR Doc. 87-15411 Filed 7-7-87 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 130
Wednesday, July 8, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., July 21, 1987.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Audit Trail Report.
Application of the Coffee Sugar Cocoa Exchange for designation as a contract market in White Sugar futures.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-15613 Filed 7-6-87; 3:49 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., July 21, 1987.

PLACE: 2033 K St., NW., Washington, DC 5th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-15614 Filed 7-6-87; 3:49 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., July 24, 1987.

PLACE: 2033 K St., NW., Washington, DC., 8th Floor Conference Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Foreign Futures and Options rule.
Report on Volume Investors and related rules.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-15615 Filed 7-6-87; 3:49 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., July 28, 1987.

PLACE: 2033 K St., NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-15616 Filed 7-6-87; 3:49 pm]
BILLING CODE 6351-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to **Federal Register** on June 26, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Approximately 10:30 a.m., following a recess at the conclusion of the open meeting.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Matters relating to the Plans administered under the Federal Reserve System's employee benefits program.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: July 6, 1987.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 87-15617 Filed 7-6-87; 3:59 pm]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM COMMITTEE ON EMPLOYEE BENEFITS

TIME AND DATE: 8:00 a.m., Tuesday, July 7, 1987. The business of the Committee requires that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to: (a) The general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans. Specific items include: Matters relating to staffing levels in the Office of Employee Benefits.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: July 6, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87-15583 Filed 7-6-87; 2:01 pm]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, July 13, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 2, 1987.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 87-15491 Filed 7-2-87; 4:41 pm]
BILLING CODE 6210-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-87-24]

TIME AND DATE: Wednesday, July 8, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 731-TA-439 (F) (Certain Welded Carbon Steel Pipes and Tubes from Taiwan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,

Secretary.

June 30, 1987.

[FR Doc. 87-15499 Filed 7-2-87; 4:41 pm]

BILLING CODE 7020-01-M

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 9:30 a.m., Tuesday, July 14, 1987.

PLACE: Hering Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: Open Special Conference.

MATTERS TO BE CONSIDERED:

FY 1989 Budget

CONTACT PERSON FOR MORE INFORMATION: Alvin H. Brown, Office of Government and Public Affairs, Telephone: (202) 275-7252.

Noreta R. McGee,

Secretary.

[FR Doc. 87-15575 Filed 7-6-87; 12:49 pm]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 6, 13, 20, and 27, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 6

Wednesday, July 8

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Beaver Valley-2 (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 13—Tentative

Wednesday, July 15

10:00 a.m.
Briefing on Mark I Containments Status (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 20—Tentative

Tuesday, July 21

10:00 a.m.
Briefing on Final Plan for NUREG-0956 Uncertainty Areas (Source Term) (Public Meeting)

2:00 p.m.
Briefing on Research Adjustment in Response to the National Academy of Sciences Report (Public Meeting)

Wednesday, July 22

10:00 a.m.
Discussion of Standardization Policy Statement Development (Public Meeting)

Thursday, July 23

10:00 a.m.
Briefing on Status of High Level Waste Management Program (Public Meeting)

2:00 p.m.
Briefing on the Status of TVA (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 27—Tentative

Wednesday, July 29

10:00 a.m.
Briefing on Medical Use of Radioisotopes and the Medical Misadministration Rule (Public Meeting)

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed Ex—2 & 6)

Thursday, July 30

9:55 a.m.
Affirmation/Discusion and Vote (Public Meeting) (if needed)

10:00 a.m
Briefing on Staff Response to Recommendations of the Materials Safety Review Group (Public Meeting)

ADDITIONAL INFORMATION: Affirmation of "Request for Hearing by Alfred J. Morabito on Denial of Senior Reactor Operator's License at Beaver Valley, Unit 1" (Public Meeting) was held July 1.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634-1410.

Andrew L. Bates,

Office of the Secretary.

July 2, 1987.

[FR Doc. 87-15498 Filed 7-2-87; 4:41 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 52, No. 129
Wednesday, July 08, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87M-0165]

Bausch & Lomb Ophthalmic Instruments; Premarket Approval of Synemed Yagmaster ND: YAG Ophthalmic Laser

Correction

In notice document 87-13167 appearing on page 21999 in the issue of Wednesday, June 10, 1987, make the following correction:

In the first column, under **SUPPLEMENTARY INFORMATION**, in the 13th line, "capsulotomy" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225-87-2002]

Memorandum of Understanding Between the National Fisheries Administration of the Republic of Korea and the Food and Drug Administration

Correction

In notice document 87-13168 beginning on page 21999 in the issue of Wednesday, June 10, 1987, make the following corrections:

1. On page 21999, in the third column, under **SUPPLEMENTARY INFORMATION**, in the second line, "§ 20.1089(c)" should read "§ 20.108(c)".

2. On page 22001, in the second column, in paragraph 3, in the seventh line, "NEA" should read "NFA".

3. On the same page, in the second column, in paragraph 5, in the 12th line, "or" should read "of"

4. On page 22002, in the first column, in paragraph 11, in the second line, the first "and" should read "on".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

National Park Service

Delta Region Preservation Commission; Meeting

Correction

In notice document 87-14053 appearing on page 23366 in the issue of Friday, June 19, 1987, make the following corrections:

1. In the third column, remove the third line reading,"--Surface water management plan" and insert "--Public Review-Environmental Assessment for a Proposed Surface Water Management Plan-Barataria Unit."

2. In the same column, remove the fifth and sixth lines reading, "--Environmental Education Center project" and insert "--Public Review-Environmental Assessment for Construction of an Environmental Education Center and Related Facilities-Barataria Unit."

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Retirement System; Normal Cost Percentages

Correction

In notice document 87-13945 beginning on page 23222 in the issue of Thursday, June 18, 1987, make the following correction:

On page 23222, in the third column, below the table, in the 11th line, the entry opposite "Congressional employees" should read "20.2".

BILLING CODE 1505-01-D

Federal Register

Wednesday
July 8, 1987

Part II

Environmental Protection Agency

40 CFR Parts 141 and 142

National Primary Drinking Water Regulations—Synthetic Organic Chemicals; Monitoring for Unregulated Contaminants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH-FRL-3213-8]

National Primary Drinking Water Regulations; Synthetic Organic Chemicals; Monitoring for Unregulated Contaminants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: In this notice, EPA is promulgating National Primary Drinking Water Regulations (NPDWRs) for certain volatile synthetic organic chemicals (VOCs). Specifically, this notice promulgates maximum contaminant levels (MCLs) for: Trichloroethylene, carbon tetrachloride, 1,1,1-trichloroethane, vinyl chloride, 1,2-dichloroethane, benzene, 1,1-dichloroethylene, and para-dichlorobenzene. The NPDWRs also include monitoring, reporting and public notification requirements for these eight VOCs. EPA is also publishing the maximum contaminant level goal (MCLG) for para-dichlorobenzene. This notice specifies the best available technology (BAT) upon which the MCLs are based and BAT for the purpose of issuing variances. In this notice, the Agency is also promulgating procedures by which systems may obtain variances and exemptions from these NPDWRs. In addition to the NPDWRs for the eight VOCs, the Agency is also promulgating monitoring requirements for 51 other synthetic organic chemicals which are not regulated by NPDWRs.

EPA proposed NPDWRs, including MCLs, for the eight VOCs listed above on November 13, 1985 (50 FR 46902). New data on the toxicology of para-dichlorobenzene became available after the November 13 notice which changed its health effects classification. EPA proposed to amend the MCLG and reproposed the MCL for this contaminant on April 17, 1987 (52 FR 12876), based on this new information.

EFFECTIVE DATES: This regulation is effective January 9, 1989, except for §§ 141.24(g), 141.35, and 141.40. The information collection requirements in 40 CFR 141.24(g), 141.35, and 141.40 are effective January 1, 1988, if the information collection request is clear by the Office of Management and Budget (OMB) and an OMB clearance number is assigned prior to that date. If not, the requirements will be effective when OMB clears the request and a notice is published. In accordance with 40 CFR 23.7, this regulation shall be considered final agency action for the purposes of judicial review at 1:00 pm eastern daylight savings time on July 22, 1987.

ADDRESSES: Public comments on the proposal, major supporting documents, and a copy of the index to the public docket for this rulemaking are available for review during normal business hours at the EPA, Room 2904 (rear) in the Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460. A complete copy of the public docket is available for inspection at EPA in Washington, DC by appointment by contacting Ms. Colleen Campbell 202/382-3027.

FOR FURTHER INFORMATION CONTACT: Joseph A. Cotruvo, Ph.D., Director, Criteria and Standards Division, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, 202/382-7575, or one of the EPA Regional Office contacts listed in "Supplementry Information". Information may also be obtained from the EPA Drinking Water Hotline. The toll-free number is 800/426-4791 and the Washington, DC number is 382-5533.

SUPPLEMENTARY INFORMATION:

EPA Regional Offices

I. JFK Federal Bldg., Room 2203, Boston, MA 02203, Phone: (617) 565-3610, Jerome Healey
II. 26 Federal Plaza, Room 824, New York, NY 10278, Phone: (212) 264-1800, Walter Andrews
III. 841 Chestnut Street, Philadelphia, PA 19107, Phone: (215) 597-9873, Jon Capacasa
IV. 345 Courtland Street, Atlanta, GA 30365, Phone: (404) 347-2913, William Patton
V. 230 S. Dearborn Street, Chicago, IL 60604, Phone: (312) 353-2650, Joseph Harrison
VI. 1445 Ross Avenue, Dallas, TX 75202, Phone: (214) 655-7155, Thomas Love
VII. 726 Minnesota Ave., Kansas City, KS 66101, Phone: (913) 236-2815, Gerald R. Foree
VIII. One Denver Place, 999 18th Street, Suite 300, Denver, CO 80202-2413, Phone: (303) 293-1424, Marc Alston
IX. 215 Fremont Street, San Francisco, CA 94105, Phone: (415) 974-0763, William Thurston
X. 1200 Sixth Avenue, Seattle, WA 98101, Phone: (206) 442-4092, Richard Thiel

Abbreviations Used in This Notice

BAT: Best Available Technology
BTGA: Best Technology Generally Available
CWS: Community Water System
EMSL: EPA Environmental Monitoring and Support Laboratory (Cincinnati)
GAC: Granular Activated Carbon
LOQ: Limit of Quantitation
MCL: Maximum Contaminant Level (expressed as mg/1)*
MCLG: Maximum Contaminant Level Goal
MDL: Method Detection Limit
mgd: Million Gallons per Day
NIPDWR: National Interim Primary Drinking Water Regulation
NPDWR: National Primary Drinking Water Regulation
NTNCWS: Non-transient Non-community Water System
p-dcb: para-Dichlorobenzene
POE: Point-of-Entry Technologies
POU: Point-of-Use Technologies
PQL: Practical Quantitation Level
PTA: Packed Tower Aeration
PWS: Public Water System
PWSS: Public Water System Supervision
RMCL: Recommended Maximum Contaminant Level
SDWA: Safe Drinking Water Act, or the "Act," as amended in 1986
THMs: Trihalomethanes
URTH: Unreasonable Risk to Health
VOC: Volatile Synthetic Organic Chemical

*1,000 micrograms (ug) = 1 milligram (mg)

Table of Contents

List of Tables

I. Summary of Today's Action

Applicability

The requirements of this notice apply to all community water systems (CWS) and non-transient non-community water systems (NTNCWS).

Non-transient non-community water systems are those which regularly serve the same 25 or more persons at least 6 months per year.

Final MCLG:

para-dichlorobenzene—0.075 mg/l

Final MCLs:

1. benzene—0.005 mg/l
2. carbon tetrachloride—0.005 mg/l
3. 1, 2-dichloroethane—0.005 mg/l
4. trichloroethylene—0.005 mg/l
5. para-dichlorobenzene—0.075 mg/l
6. 1,1-dichloroethylene—0.007 mg/l
7. 1,1,1-trichloroethane—0.20 mg/l
8. vinyl chloride—0.002 mg/l

BAT under Section 1412 of the SDWA (MCLs):

Packed tower aeration (PTA) or granular activated carbon (GAC) for all regulated VOCs, except vinyl chloride.

PTA for vinyl chloride.

Other effective removal technologies that treat all of the drinking water in a public supply although not designated BAT may also be applied to achieve compliance.

BAT under Section 1415 (Variances):

Same technologies are BAT as those under Section 1412.

Monitoring Requirements and Compliance Determination

The basic monitoring requirements are as follows:

Quarterly samples for each ground and surface water source.

Composite samples of up to five sources are allowed.

Monitoring requirements are phased in by system size (i.e., population served)

Population served	Monitoring must begin by
>10,000	Jan. 1, 1988.
3,300–10,000	Jan. 1, 1989.
<3,300	Jan. 1, 1991

Determination of compliance is established as follows: Both ground and surface water systems must calculate a running average of the concentration of each VOC, over one year, taking at least one sample per quarter, for each source.

All samples must be used.

For ground waters, the State as primacy agent may reduce the sampling frequency if regulated VOCs are not detected in the first sample. The minimum possible monitoring requirement for compliance is one sample per source.

Repeat monitoring varies from quarterly to once per five years. States determine repeat monitoring requirements based on: (1) Whether or not VOCs have been detected in the initial sampling, and (2) the vulnerability of the system to contamination (determined by the State).

Analytical Methods:

1. EPA Method 502.1—Volatile Halogenated Organic Compounds in Water by Purge and Trap Gas Chromatography.
2. EPA Method 502.2—Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography with Photoionization and Electrolytic Conductors in Series.
3. EPA Method 503.1—Volatile Aromatic and Unsaturated Organic Compounds in Water by Purge and Trap Gas Chromatography.
4. EPA Method 504—1,2-Dibromoethane and 1,2-Dibromo-3-chloropropane in Water by Microextraction and Gas Chromatography.
5. EPA Method 524.1—Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography/Mass Spectrometry.
6. EPA Method 524.2—Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography/Mass Spectrometry.

Laboratory Certification Criteria

Vinyl Chloride:

± 40 percent at any concentration

All others:

± 20 percent > 0.010 mg/l

± 40 percent < 0.010 mg/l

Point-of Entry Devices (POE), Point-of-Use Devices (POU), and Bottled Water

POE may be used to achieve compliance with MCLs; however, POE is not BAT.

POU and bottled water cannot be used to achieve compliance with the MCLs; however, either may, at State discretion, be a condition of granting a variance or exemption.

Variances and Exemptions

Prior to issuing a variance or exemption, the State has the authority to require the public water system to implement additional interim control measures if an unreasonable risk to health exists; among other mitigation techniques, States may require installation of point-of-use devices or distribution of bottled water to each customer as measures to reduce the health risk before granting a variance or exemption.

Monitoring for Unregulated Contaminants

One sample per source is required every five years.

Systems sample according to the procedures and schedules established for VOC compliance monitoring.

Monitoring for the 50 unregulated contaminants is as specified below:

List 1: monitoring required for all systems (34 contaminants).

List 2: monitoring required for vulnerable systems (2 contaminants).

List 3: monitoring required at State discretion (15 contaminants).

Repeat monitoring frequency: Every five years.

EPA will specify a new list before repeat monitoring is required (within five years).

II. Background

A. Statutory Authority

Section 1412 of the Safe Drinking Water Act, as amended in 1986 ("SDWA" or "the Act"), requires EPA to publish Maximum Contaminant Level Goals (MCLGs) and promulgate National Primary Drinking Water Regulations (NPDWRs) for contaminants in drinking water which may cause any adverse effect on the health of persons and which are known or anticipated to occur in public water systems. Under Section 1401, the NPDWRs are to include Maximum Contaminant Levels (MCLs) and "criteria and procedures to assure a supply of drinking water which dependably complies" with such MCLs. Under Section 1412(b)(7)(A), if it is not economically or technically feasible to ascertain the level of a contaminant in drinking water, EPA may require the use of a treatment technique instead of an MCL.

1. MCLs, MCLGs, and BAT

EPA is to establish MCLGs at the level at which no known or anticipated adverse effects on the health of persons occur and which allow an adequate margin of safety. MCLGs are nonenforceable health goals. EPA published MCLGs, previously called Recommended Maximum Contaminant Levels (RMCLs), for trichloroethylene, carbon tetrachloride, 1,1,1-trichloroethane, vinyl chloride, 1,2-dichloroethane, benzene, 1,1-dichloroethylene, and para-dichlorobenzene on November 13, 1985. The Agency reproposed the MCLG for p-DCB on April 17, 1987 (52 FR 12876), based on new health assessment data.

MCLs are enforceable standards which the Act directs EPA to set as close to the MCLGs as feasible. "Feasible" means feasible with the use of the best technology, treatment techniques, or other means which the Administrator finds available (taking cost into consideration) after examination for efficacy under field conditions and not solely under laboratory conditions. Also, the SDWA requires the Agency to identify the best available technology (BAT) which is feasible for meeting the MCL for each contaminant. NPDWRs are to be amended whenever changes in technology or other means permit greater protection of the health of persons, and the regulations are to be reviewed no less frequently than every three years.

2. Variances and Exemptions

Section 1415 authorizes the State (the term "State" is used in this Preamble to mean the State agency with primary enforcement responsibility for the public water supply system program, or "primacy," or EPA if the State does not have primacy) to issue variances from NPDWRs. The State may issue a variance if it determines that a system cannot comply with an MCL despite application of the best available technology (BAT). Under Section 1415, EPA must propose and promulgate its finding of the best technology, treatment techniques, or other means available for each contaminant (BAT), for purposes of Section 1415 variances, at the same time that it proposes and promulgates a maximum contaminant level for each such contaminant. EPA's finding of best technology, treatment techniques, or other means available for purposes of issuing variances may vary among systems, depending upon the number of persons served by the system or for other physical conditions related to engineering feasibility and costs of complying with MCLs, as considered appropriate by EPA. The State may not issue a variance where an unreasonable risk to health exists. When a State grants a variance, it must at the same time prescribe a schedule for (1) compliance with the NPDWR and (2) implementation of such additional control measures as the State may require.

Under section 1416(a), the State may exempt a public water system from any MCL or treatment technique requirement if it finds that (1) due to compelling factors (which may include economic factors), the system is unable to comply, (2) the system was in operation on the effective date of the MCL or treatment technique, or, for a newer system, that no reasonable alternative source of drinking water is available to that system, and (3) the exemption will not result in an unreasonable risk to health. Under section 1416(b), at the same time it grants an exemption, the State is to prescribe a compliance schedule and a schedule for implementation of any required interim control measures. For exemptions from a NPDWR promulgated after enactment of the SDWA amendments, such as the NPDWRs for the VOCs promulgated in this notice, the compliance date must be no later than 12 months after the date of issuance of the exemption. However, the State may extend the final compliance date for a period not to exceed three years after the date of issuance of the exemption if the public water system establishes that it is taking all reasonable steps to meet the standard once: (1) the system cannot meet the standard without capital improvements which cannot be completed within the period of such exemptions; (2) in the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance; or (3) the system has entered into an enforceable agreement to become part of a regional public water system. For systems that serve 500 or fewer service connections and which need financial assistance to come into compliance, the State may renew the exemption for additional two-year periods if the system is taking all practicable steps to meet the requirements in the previous sentence.

3. Primacy.

Today's regulation is one of many which EPA will promulgate during the next few years, as required by the 1986 Amendments. To retain primary enforcement responsibility ("primacy") for the public water system supervision program, States must revise their programs to include regulations that are no less stringent than the Federal NPDWRs, as required by Section 1413 of the Act. EPA plans to amend the Public Water System Supervision (PWSS) Program Implementation regulations, 40 CFR Part 142, to set out the requirements for these program revisions. The amendments will be based on the recommendations of an EPA workgroup which is currently reviewing the issues associated with such requirements. However, since these VOC regulations, promulgated under the authority of Section 1412, go into effect 18 months from the date of this notice, States must begin to modify their programs immediately without waiting for the amendments to 40 CFR Part 142.

The 18-month interval derives from Section 1412(b)(10) of the SDWA which requires that all NPDWRs be in effect no later than 18 months after the promulgation date. EPA takes the position, therefore, that the Federal NPDWRs directly apply to public water systems regardless of whether a State with primacy has adopted the requirements. As such, EPA has some discretion in establishing when States adopt the NPDWRs promulgated in today's notice since the Federal regulations will apply to all systems, even in States with primacy that have not adopted equivalent requirements.

EPA wishes, however, to avoid States having "split" or "partial" primacy, i.e., authority to implement and enforce only part of the PWSS program, for more than a short time. As such, EPA expects primacy States, to the maximum extent possible, to adopt State requirements as stringent as those contained in this Federal regulation within 18 months. Splitting oversight responsibilities, however briefly, will confuse public water system owners and operators as they try to determine which State and Federal regulations apply to them. In addition, EPA implementation and enforcement of regulations that States with primacy have not yet adopted will be limited since the EPA Regional Offices are not currently set up, or funded, to implement a day-to-day operational program. EPA believes that States should operate the total PWSS program, including the changes contained in any new regulations, from the effective date onward.

As the monitoring requirements of this regulation go into effect sooner than eighteen months after publication i.e., January 1, 1988, States with primacy should inform systems under their jurisdiction of their responsibilities under Federal law and ensure that they are monitoring even though the State

may not yet have its requirements in place. Further, States should collect and manage the analytical results during this interim period as though they had incorporated the program revisions. States should forward information on violations of the Federal requirements to the applicable EPA Regional Office.

As mentioned in the first paragraph of this section, EPA plans to specify, as part of the revisions to 40 CFR Part 142, the materials States are to submit to EPA so the Agency can determine whether a State has adopted requirements that are no less stringent than the Federal NPDWRs. State program revisions that occur before changes to 40 CFR Part 142 are promulgated must, however, be reviewed by EPA as well. States must demonstrate to EPA that their program revisions allow them to continue to meet the requirements of section 1413(a) of the SDWA and 40 CFR 142.10 of the Implementation regulations. For example, EPA must review the State's implementing statutory and regulatory changes. It may be necessary in some instances for States to provide a State Attorney General's opinion specifically explaining how the State's statutes and regulations give it the authority to implement and enforce the new requirements. Specific to the program revisions contained in today's Federal notice, States must also provide their methodology for determining the vulnerability of a public water system as this is an integral part of determining the public water system monitoring requirements. States should provide this information to EPA through the applicable EPA Regional Office. To ensure consistency with Federal requirements, EPA encourages States to involve the Regional Offices during the developmental stages of any new statutes or regulations rather than waiting until after final adoption.

It is important that public water systems be aware of their responsibilities under the Federal regulations. Systems in States without primacy are subject to the Federal requirements on the effective date of the NPDWRs, i.e., 18 months from publication in the **Federal Register** (except for monitoring requirements which are effective January 1, 1988). Public water systems located in States which do not have primacy shall forward all analytical results and other information required by this regulation to EPA directly.

Systems located in States which have primacy, but have not adopted the requirements contained in this regulation, must comply with Federal requirements. Failure by a State with primacy to establish its own requirements does not exempt a system from the Federal requirements and systems which violate a Federal requirement contained in this regulation will be subject to Federal enforcement. Public water systems located in States with primacy should, however, report analytical results and all other information required by this regulation to the State even if the State has not yet adopted the requirements of the regulation. It will be the responsibility of the State, in such cases, to forward information to EPA.

4. Monitoring, Quality Control, and Records

Under section 1401(1)(D) of the Act, NPDWRs are to contain "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures to insure compliance with such levels. . . . ." In addition, Section 1445 states that, "every person who is a supplier of water . . . shall establish and maintain such records, make such reports, conduct such monitoring and provide such information as the Administrator may reasonably require by regulation to assist him in establishing regulations, . . . in evaluating the health risks of unregulated contaminants or in advising the public of such risks." Section 1445 also requires EPA to promulgate regulations requiring every public water system to conduct a monitoring program for unregulated contaminants.

5. Non-transient Non-community Water Systems

Public water systems are defined in the Act at section 1401(1)(D)(4) as those systems which provide piped water for human consumption and have at least 15 connections or regularly serve at least 25 people. The category "public water system" is composed of community and non-community water systems. The community water system is one which serves at least 15 connections used by year-round residents or regularly serves at least 25 year-round residents (40 CFR 141.2). Non-community systems, by definition, are all other water systems. Non-community systems include transient systems (e.g., campgrounds, gas stations) and non-transient systems (e.g., schools, workplaces, hospitals which have their own water supply and serve the same population over six months of a year), as explained in more detail later.

6. Public Notification

Section 1414(c) of the Act requires the owner or operator of a public water system which fails to comply with an applicable maximum contaminant level or treatment technique requirement, testing procedure, or section 1445(a) monitoring requirement to give notice to the persons served by the water system. Owners and operators of public water systems for which variances or exemptions are in effect, or which fail to comply with the requirement of any schedule imposed pursuant to a variance or exemption, must also give notice. Section 1445(a)(5) also requires public water systems to notify the persons served by the water system and the Administrator of EPA of the availability of the results of monitoring for unregulated contaminants.

B. Regulatory Background

On June 12, 1984 (49 FR 24330), EPA proposed MCLGs for the eight VOCs covered in today's notice: Benzene, carbon tetrachloride, 1,2-dichloroethane, trichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, para-dichlorobenzene, and vinyl chloride. On November 13, 1985, EPA published the final MCLGs and proposed MCLs for these eight VOCs (50 FR 46880 and 50 FR 46902). Detailed discussions of the history of the regulation of VOCs in drinking water together with information on occurrence in drinking water and any adverse effects of human exposure were presented in these notices. This background is summarized below. EPA proposed to amend the MCLG for para-dichlorobenzene (p-DCB) and reproposed the MCL for p-DCB on April 17, 1987 (52 FR 12876).

1. MCLGs, MCLs, and Monitoring

In the November 13, 1985, notice for substances considered to be known or probable human carcinogens, EPA set the MCLGs at zero. For substances it did not consider known or probable human carcinogens, EPA set the MCLGs based upon chronic toxicity data. Table 1 summarizes the final MCLGs for these VOCs. The Chemical Manufacturers Association, the Halogenated Solvents Industry Alliance, and the Natural Resources Defense Council each filed petitions for review of one or more of these MCLGs. These petitions are pending before the U.S. Court of Appeals for the District of Columbia Circuit.

The establishment of an MCLG at zero does not imply that actual harm would necessarily occur to humans at a level somewhat above zero, but rather that zero is an aspirational goal, which

includes a margin of safety, within the context of the Safe Drinking Water Act. MCLs, even though set at levels above aspirational MCLGs, based on feasibility considerations, are also considered safe levels that are protective of public health.

EPA proposed the MCLs for the eight VOCs based upon an evaluation of (1) the availability and performance of treatment technologies [Best Technology Generally Available (BTGA), under Sections 1412 and 1415, was identified as PTA or GAC], (2) the availability, performance, and cost of analytical methods, and (3) an assessment of the costs of application of various technologies to remove VOCs from drinking water to various concentrations. Table 1 summarizes the final MCLGs and the proposed and final MCLs that EPA is promulgating in this rule.

TABLE 1.—FINAL MCLGS AND PROPOSED AND FINAL MCLS FOR THE VOCS

Compound	Final MCLG (mg/l)	Proposed MCL (mg/l)	Final MCL (mg/l)
Benzene	Zero	0.005	0.005
Vinyl chloride	Zero	.001	.002
Carbon tetrachloride	Zero	.005	.005
1,2-Dichloroethane	Zero	.005	.005
Trichloroethylene	Zero	.005	.005
p-Dichlorobenzene*	0.075	.005	.075
1,1-Dichloroethylene	.007	.007	.007
1,1,1-Trichloroethane	.20	.20	.20

*Reproposed on April 17, 1987, at zero and 0.005.

As described above, the Agency proposed to amend the MCLG and reproposed the MCL at 52 FR 12876 (April 17, 1987) for para-dichlorobenzene (which is the common name for 1,4-dichlorobenzene). These proposals were based upon results of a new National Toxicology (NTP) study. Based on a preliminary assessment of the total weight of evidence of the toxicological studies, EPA proposed to reclassify p-dcb as a Group B2 substance under the Agency's Guidelines for Carcinogen Risk Assessment at 51 FR 33992 (September 24, 1986). This notice on p-dcb also indicated that EPA was considering classification of p-dcb in Group C instead of B2. The Agency asked for public comment on the appropriate classification based on the weight of evidence.

In the November 1985 notice, EPA proposed to require non-transient non-community water systems to meet the same requirements as community water systems by broadening the definition of "community water systems." This category of public water systems includes such systems as schools and factories where the same consumers may be exposed not only for part of the day but throughout much of the year, and often for many years.

At the same time that EPA proposed the MCLs, it also proposed minimum compliance monitoring requirements consisting of one initial round of monitoring to determine the extent of contamination and certain follow-up monitoring requirements if the initial round of monitoring indicated VOC contamination. The November 1985 notice also proposed monitoring requirements for 51 additional unregulated contaminants (all VOCs) under Section 1445. These requirements were very similar to the compliance monitoring requirements proposed for the eight MCLs. The major difference was that for the unregulated contaminants only one round of monitoring was proposed (the compliance monitoring requirements called for repeat sampling ranging in frequency from quarterly to every 5 years, depending on the prior monitoring results and a determination of a system's vulnerability to contamination).

2. Reporting and Public Notice

EPA also proposed reporting and public notice requirements for VOCs in the November 1985 notice. The proposed requirements were identical to those currently in place under the National Interim Primary Drinking Water Regulations (now simply "National Primary Drinking Water Regulations"). No change in the public notice requirements was proposed at that time.

For unregulated contaminants, the proposed regulations would have required the PWS to notify its consumers of the availability of the analytical results of the unregulated contaminant monitoring and to submit a representative copy of each public notice to the State. In addition, the results of the monitoring were to be submitted to the State.

In response to the SDWA amendments of 1986, which revised the public notification requirements in Section 1414(c), EPA recently proposed changes to public notification requirements in 52 FR 10972 (April 6, 1987). That proposal includes specific explanations of the potential health risks of exposure to the eight VOCs in today's final rule. Those explanations were proposed to be required in each public notice for failure to comply with any MCL.

C. Public Comments on the Proposal

EPA requested comments on all aspects of the November 13, 1985, proposal and the April 17, 1987, reproposal. A detailed summary of the comments received and the Agency's responses are presented in the document "Summary of Comments and EPA responses on the Proposed MCLs for the VOCs, Reproposed MCLG/MCL for para-Dichlorobenzene, and Requirements for Monitoring Unregulated Contaminants," available in the public docket. General summaries of comments, with responses, pertaining to specific MCL issues are presented in the relevant sections of this notice.

EPA received over 250 written comments on the November 1985 proposed rule, including 39 from individuals, 20 from companies, 45 from water utilities or water utility associations, 10 from trade associations, 101 from Federal agencies, States, and local governments, and 44 from other groups (primarily mobile home park operators). EPA held a public hearing in Washington, D.C., on January 13, 1986, and received an additional 10 comments at that time. Additional comments were received at the May 4, 1987, public hearing as well as in writing during the public comment period on the April 1987 reproposed MCLG and MCL for para-dichlorobenzene.

III. Explanation of Today's Actions

A. Non-Transient Non-Community Water Systems

In the November 1985 notice, EPA proposed to redefine the term "community water system" to include certain non-community water systems as follows:

> Community Water System means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 of the same persons over 6 months per year.

The purpose of the change was to protect nonresidential populations of more than 25 people who, because of regular long-term exposure, might incur long-term risks of adverse health effects similar to those incurred by residential populations. The change was designed to include systems serving more than 25 persons in such places as workplaces, offices, and schools, that have their own water supplies.

EPA requested comment on this proposal. About half the commenters who addressed this issue supported the change, citing the potential health risks from exposure in these non-transient situations. The other commenters stated that the resource burden to the States and the regulated community would be excessive and felt that the potential benefits would not outweigh the costs.

EPA believes applying NPDWRs to such systems is protective of public

health and should be implemented. EPA believes the risks to consumers commonly associated with long-term exposures to contaminated drinking water in many cases could also apply to NTNCWS drinking water consumers, such as factory employees and school children exposed to the same drinking water source over a number of years. The chronic health risks to consumers in non-transient water systems would be similar to residential populations served by community water systems, since one can estimate that one-third to one-half or more of the normal daily water consumption would occur at the school or workplace, and the rest at home. Therefore, EPA believes it is appropriate to apply NPDWRs to both community and non-transient non-community water systems. However, water from systems serving populations for only a brief time (e.g., campgrounds, parks, gas stations) does not pose long-term health risk such as those associated with the VOCs. Therefore, EPA believes that it is not necessary to regulate water systems that only serve transient population for agents of chronic exposure but these water systems should be regulated for acute risks (e.g., nitrates).

Instead of amending the definition of community water systems, as proposed in the November 1985 notice, EPA is promulgating a definition of "non-transient, non-community water systems" and applying the NPDWRs for the eight VOCs to those systems (as well as community water systems, as currently defined in EPA's regulations). This term includes the universe of non-transient systems that EPA included in the revised definition of community water systems it proposed. This approach is preferable to the proposed approach because if EPA amended the definition of "community water system" to include non-transient non-community systems, then all of the existing NPDWRs would apply to those systems by definition. This is not EPA's intent. However, EPA does intend to apply future NPDWRs to non-transient non-community water systems as it evaluates and revises the existing regulations, as required by the 1986 amendments to the SDWA. In conclusion, EPA is amending 40 CFR 141.2 to add a new definition as follows:

A "non-transient non-community water system" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over six months per year.

B. MCLG for Para-dichlorobenzene

In this notice, EPA has placed p-dcb in the Group C category (limited evidence of carcinogenicity in animals). (See 51 FR 33992, September 24, 1986, for a full discussion on EPA's Guidelines for Carcinogenic Risk Assessment.) On November 13, 1985, the Agency promulgated an RMCL for p-dcb as a Group D substance, based on chronic toxicity data from the studies available at that time.

After that notice was published, the Agency received the results of a long-term study on p-dcb conducted by the National Toxicology Program (NTP) (Ref. 6). The NTP study was a chronic bioassay which used F344 rats and B6C3F1 mice. Tumors were found in both species of animals at incidences which were statistically significant. Therefore on April 17, 1987 EPA reproposed the MCLG for p-dcb. The EPA proposed the MCLG considering a classification of B2 for p-dcb but acknowledged the controversy surrounding this classification and presented an alternative Group C classification. Public comments were solicited on whether p-dcb should be classified as a B2 or C substance. The conclusions of these comments received on this proposal differed even though they were using the same criteria in the guidelines; eight commenters would place p-dcb in group C, two in Group B2.

The Agency recognizes that as with most chemicals, the evaluation of the carcinogenicity potential of p-dcb in humans is a difficult and somewhat controversial activity, in light of divergent interpretations made by the scientific community. Because it is necessary for the Agency to make a judgment based on a reasonable weighing of the evidence from the data at hand, at this time p-dcb is being classified in category C (possible human carcinogen).

At issue in the controversy of the classification is whether there exists "sufficient" evidence of carcinogenicity (i.e., B2 classification) or whether there is only "limited" evidence of carcinogenicity (i.e. Group C).

A Group B2 substance is defined by the following factors:

An increased incidence of malignant tumors or combined benign and malignant tumors in:

(a) Multiple species or strains,

(b) In multiple experiments (e.g., with different dose levels and routes of exposure) or

(c) To an unusual degree in a single experiment with regards to a high incidence, unusual site or type of tumor, or early age at onset.

A Group C is defined by the following factors:

Having limited animal evidence of carcinogenicity in the absence of human data in which:

(a) The studies involve a single animal species, strain or experiment and do not meet criteria for sufficient evidence.

(b) The experiments are restricted by inadequate dosage levels, inadequate duration of exposure, or inadequate reporting, or

(c) The studies show an increase in the incidence of benign tumors only.

As pointed out in these Guidelines, this classification is not meant to be applied rigidly or mechanically, but a balanced judgment of the totality of the available evidence needs to be considered. This weight of the evidence approach can increase the number of reasonable interpretations to the same data base.

Decision Process

Evaluating the increased male rat kidney tumors and liver tumors in male and female mice of the NTP 1986 bioassay, p-dcb might be tentatively classified in Group B2: probable human carcinogen. However, when reviewing the total weight of evidence at this juncture, p-dcb could also be classified in Group C: possible human carcinogen. Factors relevant to determining weight of evidence include: 1) evidence of carcinogenicity, 2) structure/activity relationships, 3) genotoxicity test findings, and 4) results of appropriate pharmacokinetic and toxicological observations.

Because the carcinogenicity bioassays (discussed under *Evidence of Carcinogenicity*) do not provide unequivocal evidence of carcinogenic potential for humans, it is necessary to consider all factors in determining the weight of evidence for p-dcb carcinogenicity.

(1) Evidence for Carcinogenicity. Evidence for the carcinogenicity of p-dcb is primarily limited to the NTP study of F344 rats and B6C3F1 mice. In this study, rats and mice were exposed to two doses of p-dcb in corn oil administered via gavage. The NTP concluded that there was clear evidence of carcinogenicity both for male rats as shown by an increased incidence of renal tubular cell adenocarcinomas and for mice of both sexes as shown by increased incidences of hepatocellular carcinomas and hepatocellular adenomas. No evidence of carcinogenicity was seen in female rats.

The issue in interpreting the guidelines is to determine the relevance of both the male rat kidney and mouse liver tumors to human carcinogenesis.

Induction of male rat kidney tumors by several nongenotoxoc organic chemicals has been linked to the presence of hyaline droplets composed of alpha-2u-globulin, a protein which has not been detected in female rats, mice or humans. There is evidence for the formation of hyaline droplets in male rats given p-dcb orally. It has been asserted by several investigators and commenters, and supported by substantial data, that alpha-2u-globulin is essential for hyaline droplets in the male rat kidney. Presence of hyaline droplets seen only in the male rat kidney, which was the target organ in the NTP bioassay, and lack of hyaline droplets in the female rat kidney, which was not a target organ, supports the hypothesis that hyaline droplets formation may have limited significance for human exposure to p-dcb. The mechanism of carcinogenesis is not absolutely certain but the involvement of alpha-2u-globulin is a probable and sound scientific explanation that has been developed from a large body of mechanistic and pharmacokinetic studies on this chemical.

The significant increase in mortality indicated that the MTD was exceeded for the high dose male rats.

Diminished toxicological significance might be ascribed to mouse liver tumors, which are induced by a number of chlorinated hydrocarbons. As with tumors of the male rat kidney, theories have been proposed which argue that the mouse liver response is not relevant to humans. Explanations are still tentative and the possible relevance to human carcinogenicity is a current topic of debate.

Other bioassays have been performed which although having some shortcomings confirm the negative results in the low dose NTP bioassay results. Alderly Part Wistar rats were exposed to multiple doses of p-dcb via inhalation for 76 weeks, followed by an additional 36 weeks of observation (Riley et al., 1980; described in Ref. 8). No increases in tumor incidence or type were observed. Comparisons of this study with the NTP bioassay are made difficult because of the differences in the route and duration of exposure. However, if 0.1 liter/minute was assumed as the breathing rate for 500 gram rats exposed to p-dcb for five hours/day, five days/week for seventy-six weeks, the estimated daily oral dose would be 178 mg/kg. This estimated dose is slightly higher than the low dose of 150 mg/kg in male rats, which did not produce a significant increase in kidney tumors, as reported from the NTP study. While the shorter duration of exposure may be responsible for diminished tumorigenic response, the variety of toxic effects (increase in liver, kidney, heart and lung weights, increase in urinary protein and coproporphyrin output) in the high dose group (500 ppm) indicate that the MTD was approached.

Subchronic studies have demonstrated evidence of liver and kidney toxicity and a variety of other toxic effects from p-dcb exposure to animals either via gavage or inhalation (Hollingsworth, 1956, 1958; described in Ref. 8). No evidence of carcinogenicity was found, but the short duration of these studies (6-month duration) precludes detecting carcinogenic effects unless the latency would be unusually short and the compound were a potent carcinogen.

No evidence of carcinogenicity in humans has been reported, which is not unusual. Therefore, inadequate data are available to assess the weight of evidence for carcinogenicity from epidemiological/case studies in humans.

Thus, considering the totality of evidence, the available bioassay data are equivocal as a basis for extrapolating to humans and the epidemiological data are inadequate. In the judgment of the Agency, a Group C classification for p-dcb would be more appropriate than a B2 classification based upon the information currently available.

(2) Structure-Activity. Compounds with similar chemical structures have been tested in long-term carcinogenicity bioassays, but no clear evidence of carcinogenicity has been reported. Such structure-activity information can be useful when evaluating closely related chemicals.

Two compounds with similar structures to p-dcb (orthodichlorobenzene (o-dcb) and monochlorobenzene (mcb)) have been tested in NTP bioassays. As with p-dcb, the compounds were administered in corn oil via gavage to F344 rats and B6C3F$_1$ mice. Under test conditions, o-dcb was not carcinogenic at doses of 60 and 120 mg/kg administered for 103 weeks. For mcb, an increase of neoplastic nodules of questionable statistical significance was found for high-dose male rats (120 mg/kg). Both o-dcb and mcb have been classified as Group D: inadequate evidence for carcinogenicity.

Metabolites of p-DCB (2,5-dichlorophenol and its hydroquinone) have not been tested for carcinogenicity. 2,4-Dichlorophenol was administered in drinking water in a two-year bioassay in rats (Exon and Koller, 1985; described in Ref. 8) and found to produce no increase in tumors, but was cocarcinogenic when administered with ethylnitroso urea (ENU). 2,4-Dichlorophenol has not been formally classified, but could be categorized as Group D: inadequate evidence for carcinogenicity.

Structure activity relationships alone cannot be the sole basis for discounting positive findings, but they do detract from the overall weight of evidence of carcinogenicity in this case.

(3) Genotoxicity Tests. p-Dcb was determined not to be genotoxic from a variety of short-term genotoxicity bioassays. Therefore, it is less likely that it could be carcinogenic by a genotoxic mechanism. Genotoxicity is often associated mechanistically with carcinogenicity. Some non-genotoxic substances are carcinogenic by unknown mechanisms.

p-Dcb is not mutagenic when tested in *Salmonella typhimurium* or in the *E. coli* WP2 system. Increased frequency of back mutation was observed on the methionine requiring forms in the fungus *Aspergillus nidulans*, however this finding is not considered significant.

p-Dcb was not found to induce forward mutations in mouse lymphoma cells, sister chromatid exchange in Chinese hamster ovary cells or unscheduled DNA synthesis in human lymphocytes. Negative results were also obtained in cytogenicity studies with rat bone marrow cells and a dominant lethal study in CD-1 mice following exposure to p-dcb.

(4) Pharmacokinetic and Toxicological Observations. Commenters also raised questions on the relevance of the results of the NTP bioassay to exposure of humans to p-DCB via drink water. Issues include the toxicological significance of the mode of administration (gavage vs. drinking water) and the vehicle used (corn oil vs. drinking water).

With respect to both mode of administration and vehicle, no data are available specifically on p-dcb, but bioassays on other chlorinated hydrocarbons have shown that the pharmacokinetics of absorption/distribution differ between compounds administered in corn oil via gavage compared to drinking water administration. The issue that the corn oil vehicle itself may affect hepatic metabolic capabilities and influence the susceptibility of the mouse to hepatic tumors has been a subject of controversy. No. data are available specifically on p-dcb.

Conclusion

Therefore, in considering the total weight of evidence: One positive study in two animal species, a partially corroberating study in one species, no human evidence, no replication of the results in animals, negative evidence of carcinogenicity in structurally similar compounds, negative mutagenicity studies, uncertainties with mode of administration and controversy surrounding the significance of the rat kidney and mouse liver tumor results, at this time the EPA establishing the MCLG and MCL for p-DCB considering p-dcb as a Group C carcinogen.

The classification of p-dcb as a Group B2 or Group C substance is a controversial one. EPA will reassess this classification as new information becomes available. This reclassification results in a reduction of the prior MCLG (RMCL) by a factor of 10 from 0.75 to 0.075 mg/l.

An MCLG of 0.075 mg/l (75 μg/l) has been calculated based on chronic toxicity data. The MCLG was calculated as follows:

$$DWEL = \frac{\text{reference dose} \times \text{body weight}}{\text{daily water consumption}} = \frac{(0.1\ \text{mg/kg/day})(70\text{g})}{21/\text{day}} = 3.75\ \text{mg/l}$$

$$MCLG = \frac{\text{drinking water equivalent level} \times \text{relative source contribution}}{\text{additional uncertainty factor}}$$

$$MCLG = \frac{\frac{3.75 \times}{0.2}}{10} = 0.075\ \text{mg/l}\ (75\ \mu\text{g/l})$$

Where the reference dose is calculated as:

$$RfD = \frac{\text{no observable effect level}}{\text{uncertainty factor}} = \frac{\frac{150\ \text{mg/kg/day}}{(5)}}{1000\ (7)} = 0.1\ \text{mg/kg/day}$$

The classification of Group C is also consistent with the recommendations of the National Drinking Water Advisory Council, the transcript of a meeting held by the Halogenated Solvents Subcommittee of the EPA Science Advisory Board on p-dcb. Eight out of the ten commenters who responded to the request for comment of the para-dichlorabenze classification supported the Class C decision.

Had p-dcb been assigned to Group B2, the 95% upper-limit carcinogenic potency factor for humans, q_1^*, would be the basis for the quantitation. A "what if" calculation for p-dcb, using the draft q_1^* value is 2×10^{-2} $(mg/kg/day)^{-1}$ by the multistage model and male mouse liver tumor data indicated an upper-limit individual lifetime cancer risk of 4×10^{-5} for a 70 kg human drinking 2 L/water a day for a lifetime (assumed to be 70 years) exposure to drinking water containing 75 μg/L.

C. MCLs for VOCs

In this rule, EPA is promulgating MCLs for the eight VOCs as follows:

Compound	Final MCL (mg/1)
Benzene	0.005
Vinyl chloride	0.002
Carbon tetrachloride	0.005
1,2-Dichloroethane	0.005
Trichloroethylene	0.005
para-Dichlorobenzene	0.075
1,1-Dichloroethylene	0.007
1,1,1-Trichloroethane	0.2

As noted earlier, section 1412(b)(4) of the Act requires EPA to set MCLs as close to the MCLGs as is feasible. Section 1412(b)(5) of the Act defines "feasible" to mean "feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration)," i.e., "BAT."

This provision represents a change from the provision prior to 1986, which required EPA to judge feasibility on the basis of "best technologies generally available" ("BTGA"). The 1986 amendments changed BTGA to BAT and added section 1412(b)(5), which specifies that the technology selected as BAT must be tested for efficacy under field conditions, not just under laboratory conditions. The legislative history explains that Congress removed the term "generally" to assure that MCLs "reflect the full extent of current technology capability." [S. Rep. No. 56, 99th Cong., 1st Sess., at 6 (1985)]. Read together with the legislative history, EPA has concluded that the statutory term "best available technology" is a broader standard than "best technology generally available" and that this standard allows EPA to select a technology that is not necessarily in widespread use, as long as it has been field tested beyond the laboratory. In addition, EPA believes this change in the statutory requirement means that the technology selected need not necessarily have been field tested for each specific contaminant. Rather, EPA may project operating conditions for a specific contaminant using a field tested technology from laboratory or pilot systems data.

Based on the statutory directive for setting MCLs, EPA derives the MCLs from an assessment of a range of pertinent factors, including the availability and performance of BAT, the costs of these technologies for different size water systems, and the number of water systems that would have to install technologies. EPA also evaluates the availability of analytical methods and the reliability of analytical results as well as the resulting health

risks of various contaminant concentration reduction levels attainable by BAT. For drinking water contaminants, the target reference risk range for carcinogens is 10^{-4} to 10^{-6} and most regulatory actions in a variety of EPA programs have generally fallen in this range using conservative models which are not likely to underestimate the risk. Of course, MCLs could be set outside the range depending upon the feasibility of achieving a specific level.

1. Treatment Technologies

As explained in the November 1985 proposal, EPA examined a number of treatment processes for their potential to reduce the level of VOCs in drinking water. These technologies are discussed in the document "Technologies and Costs For The Removal of Volatile Organic Chemicals From Potable Water Supplies." (Reg. 2). (A draft of this document was available at the time of the proposal. The final document is available from the National Technical Information Service at the address listed in Section VI of this notice.)

In reviewing the different technologies available, EPA looked at the following factors: Removal efficiency, degree of compatibility with the other water treatment processes, service life, and the ability to achieve compliance for all the water in a public water system.

Based on these criteria, in the November 1985 notice, EPA proposed granular activated carbon (GAC) and packed tower aeration (PTA) as "best" technologies for removing VOCs from drinking water. As described in that notice (50 FR 46914), these technologies have the following characteristics: good removal efficiencies (90 to 99 percent); compatibility with other types of water treatment processes; reasonable service life; and ability to achieve compliance for all the water in a public water system. In addition, these two technologies are commercially available and have been used successfully to remove VOCs in ground water from both influents and effluents in many locations across the United States.

In the 1986 amendments to the Safe Drinking Water Act, Congress specified in section 1412(b)(5) of the Act that:

> granular activated carbon is feasible for the control of synthetic organic chemicals, and any technology, treatment technique, or other means found to be the best available for the control of synthetic organic chemicals must be at least as effective in controlling synthetic organic chemicals as granular activated carbon.

For all the VOCs except vinyl chloride, EPA has identified GAC as technology that is effective for removing VOCs. PTA is equally effective. Therefore, these two technologies are "best" for these seven VOCs. PTA is more effective than GAC for vinyl chloride, as noted below.

Vinyl chloride differs from the other VOCs because it is a gas under typical temperature and pressure conditions. Therefore, vinyl chloride is most easily removed by PTA treatment. Because vinyl chloride is a gas and a known human carcinogen, no laboratory isotherms have been developed by EPA or reported in the literature. However, one investigator reported sporadic removal of vinyl chloride from ground water in Florida using GAC (Symons, 1978). This investigator also noted that vinyl chloride was the only one of a number of related, low molecular weight VOCs to show such an erratic pattern. A more recent, unpublished study of ground water in Wisconsin (EPA, 1987) showed less erratic removals at a higher empty bed contact time and lower raw water concentrations. It is difficult to interpret either of these studies. Therefore, because PTA has been demonstrated to be extremely effective and GAC may, under some circumstances, exhibit poor or erratic removal, EPA is not specifying GAC as "best" for the removal of vinyl chloride. PTA, however, is "best" for removal of this contaminant.

Also, it should be noted that the data used to determine removal efficiencies were based on performance for ground water. EPA expects that GAC, applied to surface water, would achieve lower performance efficiencies because of the higher levels of organic carbon found in surface water which cause more rapid depletion of the capacity of the GAC (ground waters typically have very low levels of background organic carbon) (See Reference 2).

In addition to GAC or PTA, there are other technologies which may remove VOCs from drinking water, e.g., resins, powdered activated carbon. However, EPA, has concluded that these technologies are inferior to GAC and PTA for various reasons, e.g., the technology is not commercially available or the removals are lower and/or less consistent. For a further discussion of other technologies EPA considered, and why they are not designated as "best," see EPA's technology and cost document (Reference 2).

2. Costs

As noted above, EPA is to set the MCL as close to the MCLG as "feasible," which is defined as "feasible with the use of the best technology . . . which the Administrator finds . . . is available (taking costs into consideration)." Section 1412(b)(5). In considering costs to determine whether the "best" technology is "available," (i.e., BAT), the legislative history of both the Safe Drinking Water Act of 1974 and the 1986 amendments indicates that EPA is to consider whether the technology is reasonably affordable by regional and large metropolitan public water systems [see H.R. Rep. No. 93–1185, p. 18 (1974) and statement of Senator Durenberger, Vol. No. 132 *Cong. Rec.* S6287 (daily ed., May 21, 1986)].

To determine BAT, EPA evaluated the costs associated with the technologies it considered "best," i.e., GAC and PTA. EPA estimates the total costs of removing each of the eight VOCs (in 1983 dollars) for both GAC and PTA based on 90–99 percent removal (i.e., form 0.5 mg/1 to 0.005 mg/1). EPA looked at these costs for large systems (i.e., systems serving 100,000 to 500,000 people), medium systems (i.e., systems serving 3,300 to 10,000 people), and small systems (i.e., systems serving 100 to 500 people).

Costs for large to medium systems range from 10 to 85 cents/1,000 gallons for GAC and five to 30 cents /1,000 gallons for PTA. Costs are higher for small systems; for instance, benzene removal using GAC would cost approximately $1.50/1,000 gallons, and removal using PTA would cost 86 cents/gallon. For concentrations of VOCs expected in ground waters, GAC can achieve a level of 0.005 /mg/l at reasonable empty bed contact times and carbon usage rates. This is reflected in the costs displayed in Table 5. The costs are based on carbon usage rates that estimate breakthrough at three to six months; however, in a number of locations GAC has achieved VOC levels below detection for 12 months or longer. The empty bed contact time is reflected in the capital costs and carbon usage rates in the annual O&M costs. EPA believes that the costs incurred by even the smallest system size (25–100 people) are reasonable and affordable. (Reference 2).

While most commenters agreed with the cost estimates presented in the proposal, several claimed that the Agency's treatment cost estimates were too low. EPA believes that the range of treatment cost estimates are representative. The differences between EPA's estimates and those presented by the commenters are due to the unique site-specific factors considered by the commenters (e.g., variations in costs of land, zoning requirements for tower height, housing for columns, and labor and material costs).

Some commenters stated that the Agency should consider the cost of air pollution control for VOC emissions from packed tower aeration. EPA does not believe that it is appropriate to factor the cost of air pollution control into the treatment costs since assessments show air emissions to be negligible from aeration treatment of drinking water to remove VOCs (See Ref. 5, Peters and Clark, 1985). For further information on air emissions of VOCs, see the November 1985 notice (50 FR 46911, November 13, 1985).

For contaminants with MCLGs set at a non-zero level (substances in carcinogenicity Group C, D, or E), i.e., 1,1-dichloroethylene, 1,1,1-trichloroethane, and para-dichlorobenzene, EPA has concluded that the removal costs cited above are affordable. Therefore, because these technologies meet the treatment criteria and the costs are reasonable, GAC or PTA are BAT for these three contaminants. Since these technologies can easily remove these contaminants to levels below their MCLGs, it is feasible to set MCLs equal to the MCLGs. EPA has set the MCLs accordingly.

For contaminants with MCLGs at zero (substances in either Group A or B), the analysis is somewhat different because detection and achievement of zero concentration in principle cannot be achieved. In the MCL-setting process, therefore, EPA evaluates the feasibility of achieving levels as close to zero as feasible. Based on the costs and the availability/performance of treatment described above, EPA has concluded that GAC and PTA are BAT (except that GAC is not BAT for vinyl chloride, since it is not the "best" technology).

To determine what level was feasible as BAT, EPA examined the total compliance costs at various levels of contamination (as well as the individual compliance costs summarized above). For all the contaminants with MCLGs at zero, except for vinyl chloride, if the MCLs were set at 0.005 mg/l, EPA estimates that 1300 CWS would need to install treatment at a total capital cost of $280 million to achieve compliance. If EPA set the MCLs at 0.001 mg/l for these contaminants, EPA estimates that many more systems, i.e., a total of 3800, would have to install treatment at a total capital cost of $1,300 million to achieve compliance. EPA believes that, considering the efficacy and the nationwide costs associated with these different levels, as specified in the Act, the costs associated with the additional removals, i.e., from 0.005 mg/l to 0.001 mg/l, are not warranted. Therefore, the Agency has established MCLs for trichloroethylene, carbon tetrachloride, 1,2-dichloroethane, and benzene at 0.005 mg/l.

For vinyl chloride, EPA has set the MCL at 0.002 mg/l. This lower level reflects the treatment capability of PTA that would be used to remove vinyl chloride, and it is not expected to result in any increased cost over an MCL of 0.005 mg/l. EPA believes that very few, if any, public water systems will need to install treatment solely to control vinyl chloride. Because systems with vinyl chloride present at any level virtually always have one or more of the other VOCs covered by this rule present at levels higher than the promulgated MCL for these VOCs, these systems will be treating their water to comply with the MCLs applicable to those other VOCs and the same treatment (PTA) will also remove the vinyl chloride to 0.002 mg/l.

EPA estimates the total compliance costs to meet the eight MCLs at $300 million (total present value costs) and $22.5 million (total annual costs) (See Ref. 3, "Economic Impact Analysis of Proposed Regulations"). EPA estimates the annual cost per family to be $41 per year for a small system, $12 per year for a medium system, and $3 per year for a large system.

3. Other Factors

The other factors EPA examined support its MCL determinations. They are explained below.

Analytical Methods. The Agency also examined the analytical methods available for the measurement of volatile organic chemicals in drinking water and summarized its findings in the November 1985 notice. Based on this review, the Agency has determined that analytical methods currently exist which can reliably measure VOCs in drinking water. In addition, EPA has concluded that the cost of sample analysis at intervals necessary to assure detection of MCL violation is economically feasible for all public water systems. Costs are estimated to be approximately $150 to $200 per sample analysis. Further discussion of available analytical methods is included in the section on compliance monitoring. The MDL is the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the true value is greater than zero. These MDLs are the result of measurements made by a few of the most experienced laboratories under non-routine and controlled ideal research-type conditions.

MDLs and PQLs. The MDL is used by individual laboratories to determine the laboratory-specific minimum detection capabilities. EPA has gathered information indicating that laboratories in general are able to achieve MDLs of 0.0005 mg/l or lower with the available VOC methods (Ref. 1). Specifically, under single-laboratory, ideal conditions, the method detection limits (MDLs) of the eight VOCs have been determined to range from 0.0002 to 0.0005 mg/l.

In the November 1985 proposal, EPA defined the "practical quantitation level" (PQL) as the lowest level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions. PQLs thus represent a level considered to be achievable on a routine basis. The basis for setting PQLs is (1) quantitation, (2) precision and accuracy, (3) normal operations of a laboratory, and (4) the fundamental need (in the compliance monitoring program) to have a sufficient number of laboratories available to conduct the analyses.

The PQL is analogous to the limit of quantitation (LOQ) as defined by the American Chemical Society. Both the LOQ and the PQL define the concentration of an analyte above which is the region of quantitation and below which is the region of less certain quantitation. The difference is that where the PQL is an inter-laboratory concept while the LOQ is specific to an individual laboratory. The Agency developed the PQL concept to define a measurement concentration that is time and laboratory independent for regulatory purposes. The LOQ and MDLs, although useful to individual laboratories, do not provide a uniform measurement concentration that could be used to set standards.

PQLs for the VOCs were determined based on the MDL and surrogate test data. In the past, EPA has estimated the PQL at five to ten times the MDL and, in the November 1985 notice, EPA suggested setting PQLs at this general range. In the notice EPA used the results of inter-laboratory studies to confirm this estimate. The PQLs based on these laboratory data are considered a "two-step removed" surrogate for actual laboratory performance, first because they are estimated from another measurement (the MDL) and second, because they are derived from laboratory performance under ideal circumstances. Therefore, they do not actually represent the results of normal laboratory procedures, but are a model of what normal procedures might achieve. Specifically:

(1) Laboratories receive performance evaluation samples in which a limited number of concentrations are analyzed

and the samples do not have matrix interferences as might actual samples;

(2) PQLs are based on EPA and State laboratory data which are considered to be representative of the best laboratories, but not all laboratories; and

(3) Samples are analyzed under controlled ideal testing conditions which may not be representative of routine practice.

For these reasons, the PQL represents a relatively stringent target for routine performance. EPA expects that the PQLs in this rule will push laboratories to perform at a higher level than they would otherwise. In the range between the MDL and the PQL, quantitation of contaminants can still be achieved, but not necessarily with the same precision and accuracy possible at the PQL. As measurements approach the MDL, there is much less confidence in quantitation. Thus, PQLs set a target performance level for laboratories using a specified set of precision and accuracy limitations. In this manner, PQLs provide consistency in implementing a regulatory program, in a practical way, where both quality control and quality assurance is critical.

Most commenters agreed with the PQL concept; however, several stated that the PQLs should be verified further through additional multi-laboratory studies. For instance, several commenters were critical of the PQL for vinyl chloride, stating that the level should be based on multi-laboratory data as opposed to simply being set at a value of five times the MDL. EPA agrees that the PQLs should be further verified; as explained in Reference 1, the Agency collected additional multi-laboratory data including data on vinyl chloride, and used these data to set the final PQLs.

One commenter felt that PQLs should be replaced with the LOQ concept as described above. EPA does not agree that the PQL should be set based upon the LOQ because the LOQ is dependent on the precision attainable by a specific laboratory, which can vary from day to day as well as among laboratories. Thus, the LOQ is not designed to assess the performance of a large number of good laboratories; instead, it is laboratory-specific and therefore is not suitable for setting criteria for national standards.

Some commenters stated that the PQLs were set at too high a level and suggested 0.001 mg/l, while others believed that the PQLs were too low. A PQL range from 0.02 to 0.04 mg/l for benzene was suggested by one commenter.

EPA disagrees with the comments that the PQLs were set at the wrong level; the levels were selected based on multi-laboratory data which confirmed the general rule of five to ten times the MDL. Setting the PQLs at higher or lower levels would not be consistent with the data. EPA recognizes that many laboratories have reported data at levels less than the PQL; however, the Agency does not consider the data sufficient upon which to base national standards considering the other data available. Again, PQLs provide for consistency in data quality from a diverse group of laboratories across the country, and provide routine performance goals that many laboratories must strive to achieve.

As explained in Reference 1, the PQLs are 0.005 mg/l for all the VOCs except vinyl chloride. EPA generally based the PQLs upon a laboratory performance criterion of ±20 percent or 40 percent, depending on the concentration, for each individual VOC except for vinyl chloride which was ±40 percent. This provides a relatively stringent performance target for laboratories but one that has been demonstrated to be achievable by three-quarters of the "best" (EPA and State) laboratories under evaluation conditions. It is expected that the remaining laboratories will need to upgrade their performance in order to meet this criterion. For vinyl chloride, the PQL is 0.002 mg/l (rounded from 0.0015 mg/l for the reasons discussed in Reference 1). The PQL of 0.002 mg/l recognizes that on the one hand the precision/ accuracy associated with measuring vinyl chloride is expected to be less than for the other VOCs; but that, on the other hand, vinyl chloride is a known human carcinogen of high potency and the risk posed by each unit of exposure could be higher than for the other VOCs. Because of this latter factor, EPA believes it is appropriate to accept slightly less precise data in order to seek to obtain more stringent levels of control. Technical assistance to laboratories that wish to be certified to analyze vinyl chloride is available for EPA–EMSL in Cincinnati.

For each VOC, the PQL is equal to or less than the MCL. Therefore, laboratories will be able to reliably determine whether systems are in compliance with the MCLs.

Health Risks. EPA examined the theoretical maximum health risks expected at various contaminant levels. These health risks include non-cancer risks, as well as cancer risks. The upper-limit unit risk estimates from the animal data are derived from a linearized multi-staged nonthreshold extrapolation model that is currently programmed as GLOBAL 83. Justification for its use is presented in EPA's Guidelines for Carcinogenic RISK Assessment. While recognizing that alternative statistical modeling approaches exist (e.g., one-hit, Weibull, log-probit and logit models, and maximum likelihood estimates), the range of risks described by using any of these modeling approaches has little biological significance unless data can be used to support the selection of one model over another. In the interest of consistency of approach and of providing an upper bound estimate for the potential cancer risk, the Agency recommends the use of the linearized multistage model. EPA considers this model and resulting risk estimates to be an upper-limit value in the sense that the true risk is unlikely to be higher and may be lower. An established procedure does not yet exist for making "most likely" or "test" estimates of risk within the range of uncertainty derived by the upper and lower limit values.

Table 2 presents sample risk estimates calculated at the 95 percent confidence limit using the multi-stage model for the five VOCs which are considered known or probable human carcinogens. EPA's Carcinogen Assessment Group (CAG) calculated these numbers based on the assumption of two liters of water ingested daily over a lifetime of 70 years for a person weighing 70 kilograms (kg). The Agency calculates these risk estimates so that they are not likely to underestimate the actual risks, and are conservatively used to evaluate "worse case" scenarios for the purpose of regulatory impact analysis.

TABLE 2—AN EXAMPLE OF UPPER BOUND LIFETIME CANCER RISK (10^{-5}) ESTIMATES FOR VOCS CATEGORIZED AS KNOWN OR PROBABLE HUMAN CARCINOGENS

Compound	Concentration in drinking water (mg/l)	
	Estimate	Rounded*
Trichloroethylene	0.026	0.03
Carbon tetrachloride	.0027	.003
1,2-Dichloroethane	.0038	.004
Vinyl chloride**	.00015	.0002
Benzene	.012	.01

*Risk levels are best represented by one significant figure because of the imprecise nature of the risk model extrapolations.

**Calculation using preneoplastic nodules. If preneoplastic nodules were not factored into the risk assessment, the estimated risk at 10^{-5} is 0.02 mg/l.

As mentioned above, for contaminants in drinking water, the target reference risk range for carcinogens is 10^{-4} to 10^{-6} and the MCLs EPA is promulgating in this notice generally fall in this range. EPA considers these to be safe levels and

protective of public health.This is supported by the concept expressed by the WHO 1984 Guidelines for Drinking Water Quality, where it selected a 10^{-5} guideline value, and then explained that the application could vary by a factor of ten (i.e., 10^{-4} to 10^{-6}.

4. Summary of MCL Determinations

EPA considers the MCLs determined by this process to be safe and protective of the public health. Even though the MCLGs and MCLs for certain substances such as 1,1,1-trichloroethane and para-dichlorobenzene are relatively higher than those for the other VOCs, EPA does not mean to imply that systems should allow a drinking water supply to be contaminated up to those levels. Public water supplies should always strive to distribute drinking water of the highest quality feasible. In some cases, other factors such as taste and odor can be used to limit unnecessary contamination and to assure the overall safety of the water. Although they are not federally enforceable, EPA intends to publish National Secondary Regulations for these and other substances in the future based upon aesthetic considerations. The threshold for p-DCB appears to be in the range of 0.01 mg/l. The taste and odor threshold of 1,1,1-trichloroethane is about 1 mg/l.

D. Other Treatment Technologies

As stated in Section 1412(b)(6) of the Act, this regulation does not require the use of BAT (i.e., GAC or PTA), or any other technology to meet the MCLs; public water systems may use any appropriate technology acceptable to the State that treats all of the water and that results in compliance with the MCL. For example, there are many aeration technologies other than PTA (e.g., multiple tray aeration, diffused aeration, spray aeration) that remove VOCs and which a public water system may wish to install instead of BAT.

In the November 1985 notice, EPA proposed that point-of-use (POU) and point-of-entry (POE) technologies not be considered BTGA but be considered acceptable technology to meet MCLs, provided certain conditions were met (50 FR 46916, November 13, 1985). EPA did not propose POU or POE technologies as BTGA because of difficulties associated with monitoring compliance and assuring effective treatment performance in a manner comparable to central treatment; furthermore, POU devices only treat the drinking water at a single tap. In addition to potential exposure via ingestion at untreated taps, POU devices do not treat the exposure introduced through indoor air transport (e.g., from showers or dermal contact). In addition, these devices are generally not affordable by large metropolitan water systems, which is one of the criteria for setting BAT.

In the November 1985 notice, the Agency discussed its proposal to not allow PWSs to use bottled water for compliance or to meet conditions of variances and exemptions. Public comments pointed out that bottled water may, in a few cases, be the only available "treatment technique" for the the smallest systems. The Agency restated in its April 1987 notice that bottled water was not an acceptable means of meeting the MCL requirements on a permanent basis since it does not provide the same level of protection as central treatment (i.e., persons may choose not to drink bottled water) and bottled water might allow significant exposure to water which does not meet the drinking water standard during showering and other applications. However, in that notice, EPA proposed that bottled water be allowed as an interim measure to prevent an unreasonable risk to health during the time between detection of an MCL violation and achievement of compliance; it is emphasized that provision of bottled water during this interim period does not bring the PWS into compliance with the MCL; bottled water does, however, provide an acceptable source of water to drink during the interim period. In a future notice, EPA will further assess the advisability of allowing some NTNCWS and very small systems to use bottled water to meet the MCL requirements.

The majority of commenters agreed that POU/POE devices and bottled water should not be considered BAT, and that the NPDWR should not allow their use for compliance with MCLs, due to difficulties in controlling installation, maintenance, operation, repair, and potential human exposure via untreated taps. However, other commenters stated that POU/POE devices and bottled water should be considered BAT or allowed for compliance, as these technologies were often more cost-effective for some small systems than central treatment.

In this final rule, POE and POU devices are not designated as BAT because: (1) It is significantly more difficult to monitor the reliability of treatment performance and to control the operation of POE and POU devices in a manner comparable to central treatment; (2) these devices are generally not affordable by large metropolitan water systems; and (3) in the case of POU devices, not all water is treated. In addition, under this rule, POU and bottled water are not considered acceptable means of compliance with MCLs. These devices do not treat all the water in the home and could result in health risks due to exposure to untreated water. Consequently, POU devices and bottled water are only considered acceptable for use as interim measures, e.g., as a condition of obtaining a variance or exemption, to avoid unreasonable risks to health before full compliance be be achieved. Under this rule, however, POE devices are acceptable means of compliance, because POE provides drinking water that meets the standards throughout the home. These devices may be cost-effective for small systems or non-transient non-community water systems (for which these devices would often be essentially the same as central treatment), although operational problems may be greater than for central treatment in a community system.

The SDWA requires EPA to establish necessary conditions for use of treatment that will assure protection of public health. Specifically, section 1401(l) of the Act states that primary drinking water regulations are to contain "criteria and procedures to assure a supply of drinking water which dependably complies with . . . maximum contaminant levels, including quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system." Accordingly, this rule imposes the following conditions on those systems that use POE for compliance:

(1) *Central Control.* The public water system will be responsible for operating and maintaining all parts of the treatment system (i.e., the treatment device). Central ownership is not necessary, as long as the public water system maintains control of the operation of the device. Central control is appropriate and necessary to ensure that the treatment device is kept in working order.

(2) *Effective Monitoring.* As monitoring the quality of a PWS' drinking water is a central part of ensuring compliance with any NPDWR, the public water system must develop a plan and obtain State approval for a monitoring plan before it installs the POE devices. Because POE devices present a fundamentally different situation than central treatment, a unique monitoring plan must be developed. This monitoring plan must ensure that the POE devices provide

health protection equivalent to central water treatment. Equivalent means that the water would meet all Primary and Secondary Drinking Water Standards and would be of acceptable quality similar to water distributed by a well operated central treatment plant. In addition to the VOCs, monitoring must include physical measurements and observations, such as total flow treated and the mechanical condition of the treatment equipment.

(3) *Application of Effective Technology.* There are no generally accepted standards for the design and construction of POE devices, and there are a variety of POE designs available. Therefore, the State must require adequate certification of performance, field testing, and, if not included in the certification process, a rigorous engineering design review of each type of device. Certification can be done by the State or by a third party acceptable to the State.

(4) *Maintenance of the Microbiological Safety of the Water.* The design and application of POE devices must consider the tendency for increases in bacterial concentrations in water treated with activated carbon and some other technologies. It may be necessary to use frequent backwashing, post-contactor disinfection, and monitoring to ensure that the microbiological safety of the water is not compromised. EPA considers this condition necessary because disinfection typically is not provided after point-of-entry treatment as is normal is used in a central treatment plant.

(5) *Protection of All Consumers.* Every building connected to a public water system must have a POE device installed, maintained, and adequately monitored. If the building is sold, the rights and responsibilities of the utility customer must be transferred to the new owner with the title.

E. Analytical Methods and Compliance Monitoring Requirements

1. Analytical Methods

In the November 1985 notice, the Agency proposed the use of three analytical methods that it considered economically and technologically feasible for monitoring compliance with the VOC MCLs. These methods were:

(1) EPA Method 502.1, "Volatile Halogenated Organic Compounds in Water by Purge and Trap Gas Chromatography."

(2) EPA Method 503.1, "Volatile Aromatic and Unsaturated Organic Compounds in Water by Purge and Trap Gas Chromatography."

(3) EPA Method 524.1, "Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography/Mass Spectrometry."

Capillary Column Techniques. Some commenters recommended the use of capillary column techniques for VOC analyses. The Agency evaluated capillary column methodology and agreed that they are available. Some commenters also recommended the use of detectors in series to analyze purgeable halocarbons and aromatics simultaneously. The Agency agrees and has developed Method 502.2, which provides for the use of detectors in series, and proposed capillary column analytical methods at 52 FR 12879 (April 17, 1987). This final rule includes the capillary column methods as approved analytical methods:

(1) Method 524.2, "Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography/Mass Spectrometry."

(2) Method 502.2, "Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography with Photoionization and Electrolytic Conductors in Series."

Disapproval of the 600 Series Methods. In addition, on May 27, 1986 (52 FR 19076), EPA requested comment on whether to approve the 600 series methods (i.e., EPA's analytical methods for detecting volatile synthetic organic compounds in wastewater, Methods 601, 602, and 624 in 40 CFR Part 136) for compliance monitoring since a number of comments to the November 1985 notice suggested they be approved as well.

EPA has evaluated the comments and determined that the 600 series methods are technically very similar to the 500 series methods (e.g., the analytes covered, and the analytical columns, detectors, and chromatographic conditions are the same). However, EPA has determined that the methods are not interchangeable for various reasons. First, their analytical objectives are different. The 500 series methods emphasize detectability at low levels while the 600 series methods do not focus on measurements near the MCLs (the sample volume is 5 ml in Method 624 versus 25 ml in Method 524.1). Second, the specific quality control requirements that must be met for the 500 series and the 600 series methods are different. The performance criteria specified in the 500 series methods are more stringent than those in the 600 series methods. For example, the 500 series methods include a requirement that laboratories analyze quality control standards within 60 and 140 percent of the expected value, while the established performance criteria of the 600 series methods, while they are different for each analyte, are wider. Therefore, EPA has not included the 600 series methods in this regulation as acceptable analytical methods for compliance monitoring because these methods are not designed to maximize detectability at low levels and do not have as stringent performance criteria, as do the 500 series methods.

2. Compliance Monitoring Requirements

This final rule requires compliance monitoring to determine whether public water systems are distributing drinking water that meets the MCLs. The Agency has determined that the VOCs are Tier II contaminants in the three-tiered scheme presented in the Phase II Advance Notice of Proposed Rulemaking, published on October 5, 1983 (48 FR 45502), and further discussed in the November 13, 1985, VOCs MCL proposal (50 FR 46902). Tier II contaminants are those which are of sufficient concern to warrant national regulation (i.e., MCLs or treatment technique requirements) but which occur with limited frequency, therefore justifying flexible national minimum monitoring requirements to be applied by the State.

EPA presented three options in the November 1985 notice for VOC compliance monitoring requirements (50 FR 46919). EPA proposed option 2 for the reasons stated in that proposal. This option consisted of phasing in the monitoring requirements over a four-year period based on the size of the population served by the public water supply system. Specifically:

(1) Ground-water systems would be required to take one sample per entry point to the distribution system. Surface water systems would sample at points representative of each source in the distribution system.

(2) The initial sampling to determine compliance would consist of one sample every 3 months per source for a year for both surface and ground-water systems; the State would have the discretion to reduce the number of initial samples for ground-water systems if no VOCs were detected in that initial sample. Follow-up actions when VOCs are detected, such as confirmation samples, would be left to the discretion of the State. Monitoring would be phased in over four years with large systems first.

(3) All systems would have to conduct repeat monitoring. The repeat monitoring frequency would be based on the initial monitoring results (i.e., whether VOCs were found) and on the vulnerability of the system to VOC

contamination. EPA proposed a minimum repeat monitoring frequency of once every five years for systems not considered vulnerable based on the procedure established in the initial sample (i.e., each system samples once every 3 months for a year. If no VOCs are found and the system is not vulnerable to contamination, the State may reduce the sample to that taken in the first quarter. EPA also proposed that the State be required to confirm the vulnerability status of systems once a year).

(4) Monitoring for vinyl chloride would only be required by ground-water systems detecting one or more chlorinated two-carbon VOCs (e.g., trichloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, and 1,1-dichloroethylene) for the reasons detailed in the proposal (50 FR 46919).

(5) "Grandfathering" of previously collected data, of acceptable analytical quality (i.e., comparable to those laboratories that have interim certification), including sample analysis during Federal or State surveys, would be allowed for compliance monitoring purposes.

Appendix A to the November 1985 notice contained guidance for determining the vulnerability of public water systems to contamination by VOCs. The general criteria suggested were: (1) Population; (2) nearby use, storage, or disposal of VOCs; (e.g., proximity to landfills and RCRA sites); and (3) water source protection.

EPA encouraged the States and the PWSs to analyze their watersheds every three years by conducting a sanitary survey. EPA also encouraged systems to perform a comprehensive analysis to determine the presence of the eight VOCs proposed in the notice, the unregulated contaminants listed in this notice (in Section III.J), and as many as possible of the seventy-five other contaminants for which NPDWRs are to be promulgated by June 1989 as required by the SDWA. The State could use the results of this analysis, in part, to determine requirements for monitoring frequency for the eight VOCs.

EPA received a large number of comments on the proposed monitoring requirements. Most commenters supported the phase-in approach, as proposed. Other commenters stated that the costs of monitoring were too high and that the State should have even more discretion to determine which systems should monitor and how often. Some commenters recommended that consecutive water companies not be required to sample, that a monitoring exemption be allowed for small systems, and that EPA reduce the required sampling for systems with wells that only operate a few months a year. Other commenters recommended that the vulnerability assessment be included as part of the sanitary survey which is conducted every three years under the current NPDWR for coliforms, rather than annually. Commenters supported the provisions for "grandfathering" previous data in lieu of new data for the initial round of monitoring.

In this final regulation, EPA has retained the majority of the monitoring requirements described in the preferred option (Option 2). In the final regulation, EPA is requiring that all community water systems and NTNCWs conduct an initial round of monitoring to determine the extent of contamination of water supplies. All size systems must monitor as the occurrence data collected by EPA indicate that systems of all sizes have detected VOCs at relatively high concentrations, sometimes without apparent sources of contamination. In general, the likelihood of contamination increases with population, since areas of large commercial or industrial activity are often located in large population centers. The Ground Water Supply Survey of 1982 (Ref. 7) found that 16 percent of the smaller systems (<10,000 people) and 28 percent of the larger systems (>10,000 people) had detectable VOCs . EPA believes that phasing in the monitoring requirements by system size is reasonable because of the greater vulnerability of the large systems and because these systems can more easily handle the monitoring costs associated with this regulation. In addition, phasing in the requirements over a four-year period will allow the analytical laboratories to develop the capability to handle the additional samples. This is consistent with previous regulatory actions implementing the Safe Drinking Water Act (eg., trihalomethanes).

EPA has modified the sampling locations for surface water systems such that samples can be taken after treatment from entry points to the distribution system taps that are representative of each source.

EPA investigated the feasibility of compositing samples for VOC analyses in an effort to reduce the monitoring costs. Sample-compositing could then be used as a screening test to determine whether samples from multiple sampling sites may be contaminated by VOCs. EPA investigated composites of 5 different samples since a concentration in the original sample above the PQL (and the MCL for some VOCs) should still be detectable but not quantifiable in a composite sample resulting from such dilution, for example, if one of the five samples were contaminated at 0.005 mg/l and the other four were zero. Reanalysis of each sample would be required if VOCs were detected in the composite sample. The experiments conducted by EPA were done to determine whether sample-compositing would work for the VOCs (i.e., whether VOC losses could be kept to a minimum), and to determine the technique most appropriate to minimize VOC losses.

The experiments conducted involved the preparation of composite samples for GC and GC/MS analyses.The procedures investigated for each type of analysis were different because of the difference in sample size (5-ml sample purged for GC analyses; 25-ml sample for GC-MS analyses). The compositing technique that worked best for GC analyses involved the addition of five 5-ml samples to a 25-ml glass syringe and, after mixing, drawing out a 5-ml aliquot for analysis. The mixing should be done with the sample cooled at 4° C to minimize VOC losses. Data collected for five replicate samples demonstrated excellent recovery for all compounds (95–100 percent) with good precision, generally 3–5 percent relative standard deviation. The recommended compositing technique for GC/MS analyses involves the injection of 5 ml of each sample directly into the purge device. For most components, recoveries were greater than 85 percent with good precision, generally between 3–5 percent relative standard deviation (Reference 1).

Based on this information, procedures for compositing samples are included in the regulations. Several points are briefly addressed below. Samples are to be collected from each source and shipped to the laboratory where they will be composited. Compositing is not done in the field. Public water systems and States that collect samples must be aware that there are some potential problems that should be kept in mind when they composite samples. It is desirable that sampling schedules be arranged in a manner that provides for collection of all samples to be composited the same day. Sample preparation and analysis must take place within the maximum holding time of 14 days. The samples collected are shipped to the laboratory where the analyst will prepare a composite sample from a series of discrete samples. This additional sample preparation step provides more opportunity for the introduction of recordkeeping errors so additional care must be taken. EPA recommends that all samples be collected in duplicate to provide an

additional sample in case VOCs are detected in the composite sample. This would avoid the need to resample at each sample site to determine which site(s) may be contaminated. If VOCs are detected in the composite sample, the original samples cannot be reanalyzed because of head space problems created when the first aliquot was taken. Reanalysis must be conducted for each of the duplicate samples, provided the maximum storage time of 14 days has not been exceeded. Resampling must be done immediately where one or more VOCs are detected if no duplicates are available.

The greatest limitation of compositing samples from different sources is that the analytical results will not actually provide a measurement of what is in the water if the composite sample turns out to be negative. It is possible that some VOCs may be present at trace levels and will not be detected in a composite sample. Therefore, sample-compositing is not the preferred approach but one that can be used when monitoring costs add a significant economic burden, with recognition of its limitations.

Confirmation samples of positive results can be required by the State; results of confirmation samples must be included in the quarterly average along with the initial sample. States, however, have discretion to delete obvious analytical errors in the initial or confirmation samples. In addition, States have discretion to require additional monitoring samples; results of all samples must be included in each respective quarterly average (except as noted above for obvious errors).

EPA modified some of the monitoring requirements it proposed in the November 1985 notice to address the concern of many commenters regarding monitoring costs. These changes are summarized below and further discussed in the Methods and Monitoring document (Ref. 1).

(1) The number of samples required for ground and surface water systems has been reduced from the number proposed. The rule allows composite samples of multiple sampling sites (up to five samples), resulting in lower costs. When monitoring costs would create an unacceptable financial burden, States that conduct the monitoring themselves can composite samples from different systems. This may be particularly beneficial for monitoring non-transient non-community water systems. As proposed, under the final rule, if VOCs are detected in a composite sample, follow-up analysis is required for each source (see discussion of composite samples).

(2) The repeat compliance monitoring requirements for those systems that the State determines are vulnerable but in which no VOCs were found in the initial sample, are based upon system size (see Table 4).

(3) For systems finding two-carbon VOCs, vinyl chloride analysis is required. If vinyl chloride is not detected in the initial sample States can reduce monitoring frequencies to once every three years for vinyl chloride.

As for comments recommending that EPA reduce sampling for systems with wells that only operate a few months a year, the Agency believes that any such reduction is appropriate. Under this final rule monitoring is required for all wells, including backup wells, only when they are being used. For example, four quarterly samples would not be required for wells that are only used for say two months per year; however, a sample each quarter that the wells operate would be needed.

The Agency agrees with the recommendation that the State make a vulnerability assessment once every three years rather than every year as proposed. In addition, EPA believes that the State should make a vulnerability assessment (≤500 connections) every five years only. These changes are reasonable because it is unlikely that significant undetected changes would occur in the vulnerability of a system sufficient to result in sufficient VOC contamination within a one- to two-year time period. The final rule reflects these changes.

EPA also proposed the following method for determining compliance:

(1) All quarterly compliance samples would be collected on the same day and analyzed according to procedures promulgated in this rule.

(2) Compliance with the MCL would be computed by running arithmetical average of the past four quarterly samples.

(3) Compliance would be determined for each sampling location; if water at that location was above the MCL, the entire system would be deemed out of compliance and public notice would be sent to all customers served by the system unless there was no inter-mixing of source waters in distribution.

EPA received a number of comments on the proposed method of determining compliance. Many commenters supported the methods, while other commenters believed that only that portion of the system exceeding the MCL should be considered out of compliance and that public notification should be limited to the affected consumers. EPA believes that it is often not possible to determine the specific subpopulation of consumers receiving water from a specific part of a water system, due to mixing of waters and changes in water feed pattern. However, it is recognized that certain systems may have a clearly definable distribution system from a source with no interconnections to any other source. To accommodate these different situations, EPA is promulgating the requirements for determining compliance and public notification as proposed, except that the State may determine that only one segment, i.e., the affected part of a public water system, is out of compliance and limit public notification to that one segment.

EPA received a number of comments suggesting that monitoring data from further back than the proposed three years be allowed in the "grandfather" provision. Since the 1986 Amendments to the SDWA allow use of data for unregulated contaminants back to January 1, 1983, EPA feels it appropriate to allow States discretion to also use monitoring data for the 8 VOCs back to that date. If a system is judged to be not vulnerable, the previous monitoring data can be used to represent the first round of monitoring. In addition, States can use the results of EPA's Ground Water Supply Survey for systems with single sources in the same manner; only single sources are appropriate because EPA sampled from points in the distribution system during the survey.

In conclusion, the final monitoring requirements for determination of compliance with the VOC MCLs are as follows:

(1) All CWS and NTNCW systems must monitor every three months for a year. The running average will determine compliance. If a system is not classified as "vulnerable" and the first quarterly sample does not detect VOCs, the State may waive the requirement for additional sampling.

The State may also reduce the total number of samples by the use of composite samples of multiple entry points (up to five entry points per sample) if the composites reflect operating characteristics. If VOCs are detected in a composite, follow-up sampling is required at each entry point included in the composite. This requirement will be phased in based on the size of the population served by the system as follows:

System size	Begin no later than
>10,000	Jan. 1, 1988.
3,300 to 10,000	Jan. 1, 1989.

System size	Begin no later than
<3,300	Jan. 1, 1991.

(2) Ground-water systems must sample at each entry point which is located after any treatment to the distribution system every three months.

(3) Surface water systems may sample at points in the distribution system that are representative of each source or at each entry point to the distribution system which is located after any treatment. The minimum number of samples is one sample per source, per quarter for one year. Composite samples representative of up to five sources are allowed. If VOCs are detected in the first or any subsequent sample, follow-up monitoring is required as specified by the State.

(4) Additional samples, when required by the State, are to be taken at each entry point that was included in the composite sample. If it is possible to determine from the follow-up samples which entry point(s) is out of compliance, then only that entry point(s) need be sampled unless the State determines that other entry points are vulnerable.

(5) Monitoring for vinyl chloride is required only for ground water systems which detect another chlorinated two-carbon VOC (trichloroethylene, 1,2-dichloroethane, 1,1,1,-trichloroethane, 1,1-dischloroethylene, tetrachloroethylene, cis-1, 2-dichloroethylene, or trans-1, 2-dichloroethylene).

(6) All systems to which the regulations apply are required to conduct repeat monitoring except for surface water systems that the State has not classified as vulnerable and did not detect any VOCs in the first round of sampling. The frequency of such monitoring will be based on prior monitoring results, the volunerability of the system, and for those cases where VOCs have not been detected but the system is vulnerable, by system size.

(7) These requirements are summarized in the table below:

TABLE 3.—SCHEDULE OF REPEAT MONITORING REQUIREMENTS

Status	Ground water	Surface water [1]
VOCs are not detected * in the first or any subsequent sample and the system is not vulnerable.	Repeat at least every 5 years	State discretion.
VOCs are not detected and system is vulnerable:		
Systems >500 connections	Repeat every 3 years	Repeat every 3 years.
Systems <500 connections	Repeat every 5 years	Repeat every 5 years.
VOCs detected in any sample	Quarterly	Quarterly.

[1] Must sample for four consecutive quarters.
*Detected is 0.0005 mg/l.

(8) States must certify the vulnerability status of systems at least every three years (five years for smaller systems (i.e., ≤500 connections).

(9) States have the discretion to: Require confirmation samples for positive results,

Reduce the repeat monitoring requirements for systems detecting VOCs, but at levels consistently less than the MCL, from quarterly sampling to no less than annual sampling after a baseline of data is developed during at least a three-year period,

Allow the use of monitoring data collected after January 1, 1983, in lieu of new data for the first sample if the data are of an acceptable quality and will provide information equivalent to that required in the rule.

(10) Compliance with the MCL will be based upon a running annual average of quarterly samples for each sampling location (i.e., the previous four quarterly samples). If the annual average for any sampling location is above the MCL, the system is out of compliance, public notification of the system's customers is required.

If any one quarterly sample would cause the annual average to be exceeded, the system is out of compliance as of that quarter. For example, if the first quarterly sample exceeded four times the MCL, the system would be out of compliance. The intent of this provision is to provide early notification of potential health risks.

If the State reduces the monitoring to one sample, the compliance determination is based upon that one sample.

F. Laboratory Approval

EPA's existing rules in 40 CFR 141.28 require that analyses for compliance monitoring purposes be conducted only by State-approved laboratories. Laboratories wishing to obtain approval for conducting VOC analyses must successfully analyze performance evaluation samples within the limits established by EPA and meet other requirements. The acceptance limits for laboratory approval are derived from the performance evaluation study data, i.e., the Water Supply Study series.

EPA requested comment on the use of a "plus or minus percent of true value" approach for setting performance criteria (i.e., acceptance limits). Most commenters supported the use of a "plus or minus percent" approach to derive acceptance limits over generating them from study statistics based upon 95 percent confidence limits. Some commenters believed, however, that the specific acceptance limits proposed were too strict and there would be an insufficient number of laboratories available that could meet such standards. EPA disagrees with this comment because the most recent water supply performance evaluation study showed that about 85 percent of all data submitted to EPA and State laboratories and about 70 percent of the other participating laboratories were within the proposed acceptance limits. These results compare favorably with other regulated contaminants where, even after years of experience, only 80–85 percent of all the data submitted are within the acceptance limits for each study. A specific example is the trihalomethanes, where about 85 percent of the data submitted by EPA and State laboratories and about 75 percent of the data submitted by other participating laboratories are within the established limits. The actual percentage varies somewhat from study to study.

The acceptance limits were proposed to be ±40 percent of the true value for concentrations less than 0.010 mg/l, and ±20 percent of the true value for concentrations of 0.010 mg/l or above for all of the VOCs except vinyl chloride. More recently, data from Water Supply Study No. 17, at 51 FR 19077 (May 27, 1986) indicate that most of the better laboratories tested can successfully analyze performance evaluation within the proposed acceptance limits. EPA considered lowering the acceptance limits for the seven VOCs to ±20 percent (excluding vinyl chloride). However, very few laboratories would be able to perform within these limits for all seven of the

VOCs. Only three out of eighteen laboratories were able to analyze six out of seven VOCs within these limits in Water Supply Study #17. Therefore, in the final rule, the acceptance levels are ±20 percent of the true value for concentrations of 0.010 mg/l or above, and ±40 percent of the true value for concentrations below 0.010 mg/l for seven VOCs (trichloroethylene, carbon tetrachloride, 1,1,1-trichloroethane, 1,2-dichloroethane, benzene, 1,1-dichloroethylene, and p-dichlorobenzene).

For vinyl chloride, the final acceptance limits are based initially on ±40 percent of the true value at all levels. This is because the available data support acceptance limits of ±40 percent and do not support acceptance limits of ±20 percent for this compound. EPA may modify the laboratory performance requirements for all VOCs as new information becomes available.

Even the best laboratories may not be able to analyze all the VOCs within the acceptance limits 100 percent of the time. Random errors are likely to occur in any large data generation activity. EPA has evaluated data from recent performance evaluation studies to determine how many analytes EPA and State laboratories were able to analyze within the acceptance limits. The number of analytes within the acceptance limits varies from laboratory to laboratory. EPA evaluated data from Water Supply Study #17 for EPA and State laboratories that analyzed for all eight VOCs. The data indicate that 15 out of 18 laboratories (or 83 percent of the laboratories) were able to analyze at least 6 out of 7 VOCs (excluding vinyl chloride) at concentrations of 0.004 mg/l or above within the acceptance limits, while only 7 of these laboratories (or 39 percent of the laboratories) were able to analyze all 7 VOCs. For very low levels (<0.004 mg/l) greater failure rates would result. When the highest concentration of p-dichlorobenzene (0.776 mg/l) was not considered, 15 laboratories were still able to analyze at least 6 out of 7 VOCs within the acceptance limits, while the number of laboratories that were able to analyze all 7 VOCs increased to 12 (or 67 percent of the laboratories). For vinyl chloride only 8 out of 18 laboratories (or 44 percent of the laboratories) were able to analyze all three levels within the ±40 percent acceptance limits. When the lowest concentration (0.0015 mg/l) was not considered, the number of laboratories within the acceptance limits increased to 13 out of 18 (or 72 percent of the laboratories).

EPA also evaluated preliminary data from Water Supply Study #20 to determine whether this study supports the results from the Water Supply Study #17. Two samples were offered in this study to those laboratories wishing to obtain conditional approval for VOCs. One sample contained the eight VOCs for which MCLs are being set in this notice. The second sample contained 4 of the 8 VOCs plus other Section 1445 unregulated VOCs. Excluding vinyl chloride, there were a total of 11 responses for the 7 VOCs (7 from the first sample and 4 from the second sample). The results are summarized in Table 4 for a total of 44 EPA and State laboratories.

TABLE 4.—ANALYSES WITHIN THE ACCEPTANCE LIMITS OF ELEVEN VOC SAMPLES

Acceptable data	Number of laboratories	Percent of laboratories
11 out of 11	8	18
10 out of 11	22	50
9 out of 11	31	70
8 out of 11	36	82
<8 out of 11	8	18

Taking the data from the first sample for the seven VOCs, 36 out of 44 laboratories (or 82 percent of the laboratories) were able to analyze at least 6 out of 7 VOCs within the acceptance limits, while only 22 out of 44 (or 50 percent of the laboratories) were able to analyze all seven VOCs. These results are similar to the results obtained in Water Supply Study #17 for the 7 VOCs.

Twenty-nine out of the 44 laboratories (or 66 percent of the laboratories) were able to analyze vinyl chloride within the ±40 percent limits. These results are similar to the results obtained in Water Supply Study #17 when the lowest concentration (0.0015 mg/l) was not considered.

Based on the results obtained in Water Supply Study #17 (which are supported by preliminary results from Water Supply Study #20), EPA concluded that it is reasonable to expect that laboratories meet the acceptance limits in § 141.24(g)(11) for at least 6 out of 7 of the VOCs to receive conditional approval. Therefore, the Agency will provide conditional approval of VOC analysis to laboratories that meet the following requirements:

(1) Use approved analytical methods as specified in §§ 141.24(g)(10) and 141.40(g);

(2) Are approved for THMs analysis; and

(3) Perform within the acceptance limits for at least 6 of the 7 VOCs (excluding vinyl chloride).

In addition, special conditional approval will be granted separately to laboratories wishing to analyze for vinyl chloride if they meet (1) and (2) above, and are able to perform within the acceptance limits for vinyl chloride at all levels.

The above performance criteria apply specifically to laboratories that participated in Water Supply Study #20. These requirements will apply to conditional approval until such a time when EPA evaluates additional Water Supply Study data and develops final certification criteria. States that provide their own performance evaluation samples instead of EPA samples must use testing procedures equivalent to Water Supply Study #20 and must apply the same requirements, as described above, to grant conditional approval to laboratories.

G. Variances and Exemptions

1. Variances

The conditions for granting a variance from an NPDWR are specified in Section 1415(a)(1)(A) of the Safe Drinking Water Act. According to this provision of the ACT, EPA or a state which has primary enforcement responsibility (i.e., the primacy agent) may grant variances from MCLs to those public water systems that cannot comply with the MCLs because of characteristics of the water sources that are reasonably available. A variance may only be granted to those systems which have installed best available technology, treatment techniques, or other means which EPA finds are available (taking cost into consideration); in this notice these treatment techniques will be referred to collectively as BAT. Furthermore, before a State may grant a variance, it must find that the variance will not result in an unreasonable risk to health. The level representing unreasonable risk to health for each of the VOCs will be addressed in the proposal addressing the next 40 contaminants required to be regulated under the SDWA by June 1988. The proposal is scheduled for the Fall of 1987. In general, the unreasonable risk to health level would reflect acute and subchronic toxicity for shorter-term exposures and high carcinogenic risks (as calculated using the linearized multi-stage model in accordance with the Agency's risk assessment guidelines) for long-term exposures.

Under Section 1413(a)(4), States that choose to issue variances must do so

under conditions, and in a manner, which are no less stringent than EPA allows in Section 1415. Of course, a State may adopt standards which are more stringent than the EPA standards.

Best Available Technologies for Variances. In the November 1985 notice, EPA proposed two technologies as the best technologies generally available (BTGA) for the treatment of VOCs: packed tower aeration (PTA) and granular activated carbon (GAC). The public comments that EPA received supported this finding. The 1986 amendments to the SDWA changed the technology standard for drinking water treatment from BTGA to best available technology (BAT). After carefully reexamining the proposed rule in light of the 1986 amendments, the Agency has decided that packed tower aeration or granular activated carbon are also BAT for variance purposes (except for vinyl chloride, for which BAT is only packed tower aeration); this decision is based upon the factors discussed in Section II of today's preamble.

Under Section 1415(a)(1)(A), EPA's determination of BAT for variances may vary from BAT for setting MCLs under Section 1412 based on the number of persons served by a particular water system, the physical conditions related to engineering feasibility, and the costs of compliance. With respect to small systems, there are no engineering aspects of these two technologies which would indicate that EPA should specify different BATs for variances, since VOC removal rates, operational feasibility, and equipment availability do not prevent application to even the smallest systems. In fact, both technologies are currently commercially available in sizes that can treat a single home, a few (e.g., 15) homes, or larger size systems. Therefore, EPA has determined that its selection of packed tower aeration and granular activated carbon as BAT need not be varied due to system size, or physical characteristics, and that these technologies are BAT for all public water systems.

Costs Considerations in Applying BAT to Small Systems. The Agency based its decision to designate packed tower aeration and granular activated carbon as BAT under Section 1415 for all size systems in part on the following analysis of small system costs. Table 3 displays the costs of 99 percent removals of the eight VOCs for the smallest system size (25–100 persons or 13,000 gallons per day) using PTA or GAC. (See Ref. 2 for a more detailed discussion.) The costs of treatment for the very small size category (25–100 persons or 13,000 gallons per day) range from 70 cents per thousand gallons for removal of trichloroethylene by GAC to 204 cents per thousand gallons for removal of para-dichlorobenzene by PTA. On an annual basis, this might increase the average small system residential water bill by about $70 per year to remove trichloroethylene and $200 per year to remove 1,2-dichloroethane.

TABLE 5.—ESTIMATED COSTS OF REMOVING VOCS FROM DRINKING WATER USING PACKED TOWER AERATION OR GRANULAR ACTIVATED CARBON FOR THE SMALLEST SYSTEM SIZE*

[Assuming 99 percent removal from 0.5 mg/1 to 0.005 mg/1]

Chemical	PTA			GAC		
	Capital	Annual O & M	c/ 1,000 gallons	Capital	Annual O & M	c/ 1,000 gallons
TCE	$58,000	$800	169	$13,000	$1,600	70
C. Tet.	52,000	700	162	13,000	2,000	79
1,2-DCA	62,000	1,300	202	13,000	330	106
V.C.	48,000	600	148	NA	NA	NA
1,1-DCE	50,000	600	154	13,000	1,600	70
Benzene	56,000	1,000	180	13,000	5,500	153
1,1,1-TCA	50,000	700	156	13,000	3,500	110
p-DCB	63,000	1,300	204	13,000	1,700	72

*Cost are in 1983 dollars. Smallest system = 13,000 gallons/day average flow or 25–100 persons served.

Although current total water costs for typical small system households range from about $100 to $150 per year, these costs are quite low in comparison to the costs of other utilities. In addition, as system size increases, the costs of water treatment per unit volume of water rapidly decline. For example, using all the same assumptions, the packed tower aeration costs decrease from 202 cents per thousand gallons for the 25 to 100 person (0.013 mgd) system size category to 101 cents per thousand gallons for the 101 to 500 person (0.037 mgd) system size category, and decrease further to 21 cents per thousand gallons for the 50,001 to 75,000 person (12 mgd) category. Thus, aeration treatment offers significant economies of scale, e.g., with respect to 1,2-dichloroethane removal, as plant size increases by a factor of three (0.013 mgd to 0.037 mgd), the cost decreases by a factor of two (202 to 101¢/1,000 gallons). In addition, costs will be less when lower removal efficiencies are sufficient to achieve the standard in those cases where the raw water concentrations are less than 0.5 mg/1, which is usually the case.

It should be noted that the costs in Table 3 are based on a variety of data (see Ref. 2). For all the VOCs, except vinyl chloride, benzene, and p-dichlorobenzene, carbon usage rates are based on projection of pilot column data. Neither adequate adsorption isotherms nor column data were available to project carbon usage rates or empty bed contact times for vinyl chloride. As indicated earlier, GAC adsorption is not considered BAT for the removal of vinyl chloride because of this and other feasibility considerations. For the two aromatic compounds, benzene and p-dichlorobenzene, only carbon adsorption isotherms were available. That is, no pilot column data were available for these two compounds. To compensate for this lack of pilot column data, the cost estimates in Table 3 for these two compounds were adjusted to be higher than if column data had been available (see Ref. 2). These costs are believed to be adequate for purposes of determining MCLs and estimating national economic impacts.

Both pilot- and full-scale data demonstrate that packed tower aeration and granular activated carbon are capable of 90–99 percent or greater removals of the VOCs (except that GAC is not as effective as PTA for vinyl chloride). In light of this removal efficiency and the potential cost impacts, the Agency considers the treatment costs to be justified and reasonable; under a worst case scenario, the water rate might double for the smallest system consumers. Consequently, the Agency has concluded that there is no reason to vary the BAT standard for small systems.

Required Examination and Installation of Alternate Treatment Technologies. Under section 1415 of the Act, a State may grant variances from a

NPDWR if certain conditions are met. These conditions, described more fully below, include: (1) An inability to meet the MCLs despite the installation of the best available technology; (2) a finding that the variance will not result in an unreasonable risk; (3) imposition of a compliance schedule; (4) implementation of such additional control measures as the State may require; and, (5) public notice of the proposed variance and opportunity for a hearing.

To receive a variance, a PWS would be required to install BAT first even if the BAT was not anticipated to achieve the MCL; the objective would be to reduce the level of contaminants as much as could be achieved by those technologies. The only exception to this requirement is that if a system were to demonstrate that the best available technology only achieved *de minimis* reduction of the contaminant(s) of concern, the system would not have to install that technology. However, as a condition of receiving a variance without installing BAT, the State could require comprehensive engineering studies of other technologies and if any were technically feasible, it could require one of those technologies to be installed.

EPA has identified three additional treatment methods that the State may require the PWS to investigate and, if feasible, to install as a condition of obtaining a variance. These are: (1) Removal using other aeration techniques, such as multiple tray aeration, spray aeration, cascade aeration, diffused aeration, or mechnical aeration; (2) removal using powdered activated carbon adsorption; and (3) use of an alternative source of water.

EPA discourages systems from using an alternative source of water which has no VOC contamination but may be contaminated with other substances. Specifically, EPA discourages systems which find low levels of VOCs in their ground water source, which is otherwise of good quality, from switching to a surface water source where the risk from disinfection by-products (e.g., trihalomethanes) might be greater than from the VOCs. In such a case, where alternative sources pose a greater risk than the VOC-contaminated supply, the water supplier should treat the original water.

Subsections 1415(a)(1)(A) (i) and (ii) of the SDWA require the State to prescribe a schedule for compliance at the same time that it issues a variance. The schedule must include: (1) Increments of progress toward compliance; and (2) an implementation plan of such control measures and application of other treatment techniques or technologies that the State considers necessary. These provisions are aimed at bringing the system into compliance with the MCL as soon as practicable. The following points need to be taken into consideration:

(1) The schedule of compliance which accompanies a variance may require that the system examine other treatment methods (e.g., various aeration technologies, powdered activated carbon, or alternate sources of water) to determine their availability, feasibility, costs, and effectiveness.

(2) Such an examination may include engineering studies and pilot projects, for potentially applicable technologies, to determine what reduction in VOC levels could be achieved by the treatment method. EPA will provide guidance on examining technologies for compliance schedules.

(3) Systems or the State always have the option of proposing studies of other methods.

(4) The State can decide whether any of the possible teatment methods would achieve reductions in VOC levels justifying use of that particular method. In such cases, the State may require, as part of the compliance schedule, installation and use of such methods by the system.

Use of POU Devices and Bottled Water. As described above, under section 1415(a)(1)(A)(ii), the State is to prescribe a schedule for implementation of any additional control measures it may require. The State may require the use of POU devices, bottled water, or other mitigating measures as an "additional control measure" during the period of a variance, as a condition of receiving the variance, if an unreasonable risk to health exists.

In prescribing the use of POU devices, the State would be required to impose the same conditions as outlined in section III.A.1 for approval of POE devices. If a PWS distributes bottled water as a control measure, the PWS must ensure that the following conditions are satisfied:

(1)(a) The bottled water is subject to a monitoring program that provides adequate assurances that the water meets all MCLs. The public water system must monitor the bottled water for VOCs the first quarter that it supplies water to the public, and annually thereafter. Results of the monitoring program shall be provided to the State annually, or

(b) The public water system must receive a certification from the bottled water company that (i) the bottled water supplied has been taken from an "approved source" as defined in 21 CFR 129.3(a); (ii) the bottled water company has conducted monitoring in accordance with 21 CFR 129.80(g) (1)–(3); and (iii) the bottled water does not exceed the MCLs or quality limits set out in 21 CFR 103.35. The public water system shall provide the certification to the State the first quarter after it supplies bottled water and annually thereafter; and

(2) The public water system is fully responsible for the provision of sufficient quantities of bottled water to every person supplied by the public water system including delivery via a door-to-door bottled water delivery system.

These conditions constitute the minimum standards for protection of public health.

2. Exemptions

Under section 1416(a), a State may exempt public water systems from any requirements respecting an MCL or treatment technique requirements of an NPDWR, if it finds that (1) due to compelling factors (which may include economic factors), the PWS is unable to comply with the requirement; (2) the exemption will not result in an unreasonable risk to human health; and (3) the PWS was in operation on the effective date of the NPDWR, or for a system which was not in operation by that date, only if no reasonable alternative source of drinking water is available to the new system. If a State grants an exemption to a public water system, it must at the same time prescribe a schedule for compliance (including increments of progress) and implementation of appropriate control measures that the State requires the system to meet while the exemption is in effect. Under section 1416(2)(A), the schedule must require compliance within one year after the date of issuance of the exemption. However, section 1416(b)(2)(B) states that the State may extend the final date for compliance provided in any schedule for a period not to exceed three years, if the public water system is taking all practicable steps to meet the standard and one of the following conditions applies: (1) The system cannot meet the standard without capital improvements which cannot be completed within the period of the exemption; (2) in the case of a system which needs financial assistance for the necessary implementation, the system has entered into an agreement to obtain financial assistance; or (3) the system has entered into an enforceable agreement to become part of a regional public water system. For public water systems which do not serve more than 500 service connections and which need financial

assistance for the necessary improvements, the State may renew an exemption for one or more additional two-year periods if the system establishes that it is taking all practicable steps to meet the requirements noted above. Section 1416(b)(2)C).

Under section 1416(d), EPA is required to review State-issued exemptions at least every three years and, if the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting exemptions or failed to prescribe schedules in accordance with the statute after following various procedures, the Administrator may revoke or modify those exemptions and schedules. EPA will use these procedures to strictly scrutinize exemptions from the MCLs for VOCs granted by states and, if appropriate, will revoke or modify exemptions granted.

Under this rule, as a condition of receiving an exemption, the State may require the use of POU devices or bottled water for the duration of the exemption. The conditions for the use of POU devices or bottled water are the same as those described for variances in section III.G.1.

3. Central Treatment vs. POU/Bottled Water

EPA believes that, when treatment is appropriate, central treatment should be the primary means of attaining MCLs. However, although the long-term goal for these systems is to meet MCLs with centrally treated and distributed water, EPA is allowing the State to require the use of POU devices or bottled water, for instance, if there is an unreasonble risk to health, as a condition of receiving a variance or an exemption to ensure that the PWS provides an interim source of drinking water that meets the MCLs while the system brings its water supply into compliance. This is especially valuable in the case of exemptions for small systems, i.e., systems with less than 500 connections, because their exemptions may be extended for one or more two-year periods. The goal is application of non-central treatment or bottled water is to provide water of equivalent quality to that which would be provided by a traditional well operated central treatment facility. Equivalent means water that meets all Primary and Secondary Drinking Water Standards and is not an acceptable quality.

H. Public Notification

Under section 1414(c)(1) of the Act, each owner or operator of a public water system must give notice to persons served by it of (1) any violation of any MCL, treatment technique requirement, or testing provision prescribed by an NPDWR; (2) failure to comply with any monitoring requirement under section 1445(a) of the Act; (3) existence of a variance or exemption; and (4) failure to comply with the requirements of a schedule prescribed pursuant to a variance or exemption. The 1986 amendments require that, within 15 months of enactment, EPA amend its current public notification regulations to provide for different types and frequencies of notice based on the differences between violations which are intermittent or infrequent and violations which are continuous or frequent, taking into account the seriousness of any potential adverse health effects which may be involved.

EPA proposed regulations to revise the public notification requirements on April 6, 1987 (52 FR 10972). The regulations proposed that public notices for MCL and treatment technique violations ("Tier 1 violations") contain mandatory health effects language specifying concisely and in non-technical terms what adverse health effects may occur as a result of the violation. States and water utilities would remain free to add additional information to each notice, as deemed appropriate for specific situations. The April 1987 notice proposed specific health effects language for the eight VOCs which are subject to today's rulemaking. The April 1987 notice also proposed that a CWS with Tier 1 violations must notify the public by newspaper, mail delivery of notice and press release (for acute violations) is required. The proposal states that public water systems which fail to comply with any monitoring or testing requirements, which are granted variances or exemptions, or which fail to comply with the requirements of a variance or exemption schedule, would be required to give newspaper notice, with additional notice at State discretion. The PWS is allowed to post notice under certain conditions for Tier 1 and Tier 2 violations. The Agency expects to promulgate final public notification regulations in September 1987.

I. Reporting Requirements

The current regulations, 40 CFR 141.31, require public water systems to report monitoring data to States within specified time periods. EPA did not propose any changes in these requirements for the VOCs. No comments were received on this issue. Thus, EPA will require the same reporting requirements for the VOCs as required under the current regulations for other contaminants.

The reporting requirements for results of the monitoring for unregulated contaminants (described below) apply to both the community water systems (CWS) and the NTNCWS. Each CWS or NTNCWS must submit the results of the monitoring within thirty days of receipt from the certified laboratory. These results are to be submitted to the State. In addition, the State or public water system must submit the following information to EPA for every sample: (1) Results of all the analytical methods, including negatives; (2) name and address of the system that supplied the sample; (3) contaminants for which the analyses were performed; (4) analytical method(s) used; (5) date of sample; and (6) date of analysis.

J. Total Volatile Synthetic Organic Chemicals (TVOC)

In the June 12, 1984, proposal for MCLGs for the VOCs, EPA requested public comments on setting an MCLG and MCL for total volatile organic chemicals to provide additional protection from simultaneous exposure to multiple VOCs. Following analysis of public comments and available scientific information, EPA determined that an MCLG and MCL would not be appropriate at this time. This conclusion was discussed in the November 1985 notice.

K. Monitoring for Unregulated Contaminants

Section 1445(a)(1) of the Act requires EPA to promulgate regulations by December 19, 1987, which require public water systems to conduct a monitoring program for unregulated contaminants. Each system must monitor at least once every five years for unregulated contaminants unless EPA requires more frequent monitoring. This data will assist EPA in determining whether regulations for these contaminants are necessary, and if so, what levels might be appropriate.

EPA proposed monitoring requirements for 51 unregulated contaminants in the November 1985 notice. The Agency also requested comment on a method developed for the analysis of 1,2-dibromoethane (EDB) and 1,2-dibromo-3-chloropropane (DBCP) at low levels. These two compounds are included among the substances that PWSs must monitor under Section 1445, as discussed below. This method is entitled "Method 504—1,2-Dibromoethane (EDB) and 1,2-Dibromo-3-chloropropane in Water by Microextraction and Gas

Chromatography." EPA received no comments on Method 504. The Agency believes that this method is adequate to determine concentrations of EDB and DBCP. Therefore, this method is included in this rule as the monitoring method for these two contaminants. Several commenters pointed out that analysis of 10 to 15 other compounds on the list of 51 was more difficult than analysis of the other compounds, resulting in higher costs. In addition, they observed that the likelihood of these substances being present is much less than for other VOCs. EPA agrees with these comments and thus is promulgating monitoring regulations which separate the unregulated contaminants into three lists as follows:

List 1: Monitoring required for all CWS and NTNCWSs. Compounds can be readily analyzed.

List 2: Monitoring required only for systems vulnerable to contamination by these compounds. Compounds have limited localized occurrence potential and require some specialized handling.

List 3: The State decides which systems would have to analyze for these contaminants, which includes compounds that do not elute within reasonable retention time using packed column methods or are difficult to analyze because of high volatility or instability, and are much less likely to be present in drinking water.

EPA is deleting the monitoring requirements for pentachloroethane and bis(2-chloroisopropyl) ether from the list of unregulated contaminants in the final rule. Pentachloroethane has been deleted because it is unstable in water. Bis(2-choroisopropyl) ether has been deleted because it does not purge well, and there are very few occurrences in drinking water. Therefore, both of these are low priority compounds for regulation. EPA is adding tetrachloroethylene to List 1 because the rulemaking for this contaminant is now included with the contaminants scheduled for regulation in June 1988 and the resulting monitoring data will be useful (see the November 13, 1985, notice for discussion of the tetrachloroethylene regulation). In addition, 1,3-dichloropropene has been added to List 1 because it has been detected in ground waters and is measured by these analytical methods. Data gathered under this Section 1445 regulation can be used for compliance purposes when EPA promulgates regulations for tetrachloroethylene and any other of these VOCs for which EPA is developing MCLs.

Table 6 presents the three lists of compounds.

Table 6—Unregulated Contaminants

List 1: Monitoring Required for All Systems

Bromobenzene
Bromodichloromethane
Bromoform
Bromomethane
Chlorobenzene
Chlorodibromomethane
Chloroethane
Chloroform
Chloromethane
o-Chlorotoluene
p-Chlorotoluene
Dibromomethane
m-Dichlorobenzene
o-Dichlorobenzene
trans-1,2-Dichloroethylene
cis-1,2-Dichloroethylene
Dichloromethane
1,1-Dichloroethane
1,1-Dichloropropene
1,2-Dichloropropane
1,3-Dichloropropane
1,3-Dichloropropene
2,2-Dichloropropane
Ethylbenzene
Styrene
1,1,2-Trichloroethane
1,1,1,2-Tetrachloroethane
1,1,2,2-Tetrachloroethane
Tetrachloroethylene
1,2,3-Trichloropropane
Toluene
p-Xylene
o-Xylene
m-Xylene

List 2: Required for Vulnerable Systems

Ethylene dibromide (EDB)
1,2-Dibromo-3-Chloropropane (DBCP)

List 3: Monitoring Required as the State's Discretion

Bromochloromethane
n-Butylbenzene
Dichlorodifluoromethane
Fluorotrichloromethane
Hexachlorobutadiene
Isopropylbenzene
p-Isopropyltoluene
Naphthalene
n-Propylbenzene
sec-Butylbenzene
tert-Butylbenzene
1,2,3-Trichlorobenzene
1,2,4-Trichlorobenzene
1,2,4-Trimethylbenzene
1,3,5-Trimethylbenzene

The compounds in List 1 can be analyzed easily with the analytical methods in this final rule (Methods 502.1, 503.1, and 524.1). As previously discussed, the Agency has also developed capillary column methods (Methods 502.2 and 524.2) that are also available for the monitoring of these compounds. Monitoring for the compounds in List 2 (EDB and DBCP) requires much lower limits of detection and quantitation because of health concerns at low levels; as stated above, EPA Method 504 is available for the analysis of these two compounds at lower levels. Analysis of compounds in Lists 2 and 3 is best accomplished using the capillary column methods.

Analysis for unregulated contaminants must be conducted in laboratories approved for VOC analysis by the State. Because the monitoring requirements for unregulated contaminants will go into effect before full certification programs can be implemented, EPA will accept monitoring data analysis from those laboratories that analyze performance evaluation samples for VOCs within acceptable limits of the true value for the VOCs and that have been approved for THM analysis. The acceptance limits are ± 20 percent for concentrations ≥ 0.010 mg/l and ± 40 percent for concentrations < 0.010 mg/l. Laboratories conducting EDB and DBCP analysis should be approved separately by the State.

The monitoring requirements for the unregulated VOCs are similar to those required for the regulated VOCs so that public water systems are encouraged to use the same samples for all the analyses and to have the analysis of the unregulated VOCs performed with the analysis for the regulated VOCs, thereby reducing the costs of both sampling and analysis. This approach was generally supported by commenters.

The State would determine whether to require consecutive systems to monitor for VOCs and trihalomethanes under Section 1445 for systems with a population of less than 10,000. If the consecutive system disinfects, then the samples for trihalomethanes should be taken after disinfection. This is because these systems currently do not monitor for trihalomethanes and trihalomethane concentrations usually increase after disinfection by the consecutive systems.

The November 1985 proposal did not include repeat monitoring for unregulated VOCs (unless imposed by the State). In this final rule, however, EPA is requiring repeat monitoring for unregulated contaminants every five years, as specified in the SDWA Amendments of 1986. However, EPA expects to specify a new list for unregulated contaminant monitoring within five years. This means that PWSs will not actually have to conduct repeat monitoring for the list of 50 specified in this notice, but instead will monitor for a new list in five years. However, States are encouraged to require follow-up

monitoring for these 50 contaminants and mitigation procedures as needed if contamination is indicated.

States may delete contaminants from the list if EPA approves, and can add contaminants to the list for individual public water systems without EPA approval. The State may apply to EPA for approval in order to delete a substance for an individual water system by certifying to EPA that it has used the vulnerability criteria in reaching that decision. EPA will retain oversight authority of this process.

Section 1445(a)(6) states that EPA may waive the monitoring requirements for unregulated VOCs for systems that have conducted monitoring programs since January 1, 1983. EPA will waive this requirement only if the monitoring program was consistent with the requirements promulgated today. "Consistent" means the sampling locations, sampling techniques, and analytical methods are the same, and the analyses were performed by qualified laboratories (i.e., laboratories that are THM-certified) with adequate quality control. While EPA would prefer that all of the 33 VOCs on List 1 would have been included in the previous monitoring program, the Agency intends the requirements to be flexible so that systems that have monitored for most of the 33 VOCs could qualify for a waiver. For example, if 30 of 33 VOCs were included in a previous monitoring program by a particular system, that system might qualify for a waiver depending upon which three VOCs were not included. If these were relatively high occurrence VOCs, then a waiver would be inappropriate. Other factors that EPA will consider are the results of the monitoring program for the contaminants that were analyzed and the system's vulnerability status.

Under section 1445(a)(7), systems serving fewer than 150 connections are treated as complying with the unregulated contaminant monitoring requirements if the systems provide water samples or the opportunity for sampling. While EPA encourages these systems to request the additional analytical results for the unregulated contaminants from laboratories conducting their analysis for VOC compliance monitoring since the additional cost is relatively small (probably $50 or less), this is not a requirement of this rule. Under the final rule, these systems are required to send a letter to the State specifying that their system is available for sampling; no samples are to be sent unless requested by the State.

States or the water systems may composite up to 5 samples when monitoring for unregulated contaminants. The compositing procedure is described in the section on Compliance Monitoring.

IV. Effective Dates

These regulations have an effective date of January 1, 1988: the laboratory performance requirements and monitoring for compliance requirements (§ 141.24(g)) and the unregulated monitoring and reporting requirements (§ 141.35 and 141.40) [Prior to the adoption of the compliance monitoring requirements by the State, the authority for compliance monitoring is section 1445 of the Act]. All other provisions promulgated in this final rulemaking (concerning MCLs, variance, and exemptions, provisions of reporting and recordkeeping) are effective January 9, 1989, as provided in section 1412(b)(10).

V. Impact Analyses

The economic impact analysis supporting this final rule is contained in "Economic Impact Analysis of Proposed Regulations to Control Volatile Synthetic Organic Chemicals in Drinking Water," October 1985, as amended (Ref. 3). The report presents estimates of the benefits and costs of regulatory alternatives. Also included are analyses required by the Regulatory Flexibility Act and the Paperwork Reduction Act. The purpose of the assessment was to determine overall economic impacts of the regulations. The addendum to the assessment responds to comments made during the public comment period. There has been no significant change in the initial assessment, which showed that approximately 1300 community water supplies would be expected to exceed the final standards without additional controls. If nearly all these systems took actions to comply with the regulations, the total present value cost of compliance to the nation would be about $280 million. On an annualized basis, the cost of compliance would be $21 million per year. Extending the VOC regulations to non-community non-transient water systems will require approximately 400 additional systems to treat their water, at a capital cost of $20 million and approximately $1.5 million per year.

The cost impacts on community water systems and consumers affected by volatile organic contamination vary depending upon the size of the PWS. Very small systems which serve from 25 to 500 people could be expected to increase their water rates by approximately 54 cents per 1000 gallons of water. As a result of economies of scale, large community systems serving more than 50,000 people could be expected to increase their rates only about 5 cents per 1000 gallons. These increases would only affect systems with contaminant levels above the standards.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. This action does not constitute a "major" regulatory action because it will not have a major financial or adverse impact on the country. This regulation has been reviewed by the Office of Management and Budget as required by Executive Order 12291 and their comments are available in the public docket.

The costs of compliance monitoring and monitoring for the unregulated contaminants are presented in Table 7 (see Ref. 3). As noted above, composites of up to five sources are allowed and the costs shown in Table 7 assume that systems composite a number of their sources. In addition, certain States conduct monitoring for small systems. Compositing of different system sources by States is allowed in the regulations; savings are estimated to be $500,000 per year for the initial compliance monitoring, $200,000 per year for the initial unregulated monitoring, and $400,000 per year for the repeat compliance monitoring.

TABLE 7.—COSTS ($ MILLION/YEAR) FOR MONITORING FOR COMPLIANCE WITH MCLS FOR VOCS AND FOR UNREGULATED VOCS

Initial Round:	
VOCs subject to MCLs	$7.5
Unregulated contaminants	$1.7
Repeat Monitoring:	
VOCs subject to MCLs	$19.2
Unregulated contaminants	[1]

[1] The cost for repeat monitoring of unregulated contaminants will vary because the Agency will specify a new list of contaminants to be monitored in five years. Consequently, contaminants other than those specified in this notice may be listed at that time.

The Regulatory Flexibility Act requires EPA to explicitly consider the effect of regulations on small entities. If there is a significant effect on a substantial number of small systems, the Agency must seek means to minimize the effects. With respect to the requirements of the Regulatory Flexiblity Act, 5 U.S.C. 602 *et seq.*, today's action will not have a significant effect on a substantial number of small entities. Using the Small Business

Administration's definitions, a "small" water utility is one that serves fewer than 50,000 people. There are about 78,500 such systems. Of these, fewer than 1700 are likely to have contamination levels greater than the MCLs. Therefore, this rule will affect about that 2 percent of the "small" systems, which does not constitute a substantial number of small systems. However, it is possible that today's action will have a substantial impact on a few small systems if regulated VOCs are found at levels higher than the MCL. Therefore, the Agency has attempted to provide alternatives to the requirements whenever possible. Specifically, EPA allows compositing of samples. Small systems may choose to composite their samples and to share the analytical costs. Also, the Agency has allowed bottled water and point-of-use devices as conditions of receiving a variance or exemption, even though decentralized treatment is less than the Agency's long-range goal of centralized treatment (due to untreated taps and possible inhalation effects), to accommodate the needs of the smaller systems with limited resources. The Agency also has given states the discretion to reduce monitoring frequency in accordance with a system's findings of no VOCs and its vulnerability status. Consequently, small systems which do not have VOC contamination in their water supply and are not located in a vulnerable area may have to monitor only infrequently. In addition, very small systems are not required to sample for unregulated contaminants; they are only required to provide a sample or make the opportunity for sampling available to the State.

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register.**

VI. References and Public Docket

The following references are referred to in this notice and are included in the Public Docket together with other correspondence and information. The Public Docket is available for viewing by appointment in Washington, D.C. by calling the telephone number at the beginning of this notice. All public comments received on the proposal are included in the Docket.

(1) * U.S. Environmental Protection Agency, Criteria and Standards Division, Analytical Methods/ Monitoring the VOCs in Drinking Water. June, 1987.

(2) * U.S. Environmental Protection Agency, Criteria and Standards Division, Techologies and Costs for the Removal of Volatile Organic Chemicals from Potable Water Supplies. May, 1985.

(3)* U.S. Environmental Protection Agency, Office of Program Development and Evaluation, Economic Impact Analysis of Proposed Regulations to Control Volatile Synthetic Organic Chemicals in Drinking Water. October, 1985, as amended 1987.

(4) U.S. Environmental Protection Agency, Criteria and Standards Division, Summary of Comments and EPA Responses on the Proposed MCLs for the VOCs, Reproposed MCLG for para-Dichlorobenzene, and "Requirements for Unregulated Contaminants." (June 1987)

(5) Peters, W., and Clark, S. Memo: Risks Associated With Air Emissions from Aeration of Drinking Water. To Robert G. Kellam, Program Analysis and Technology Section and Arthur H. Perler, Science and Technology Branch, Criteria and Standards Division, Office of Drinking Water. Nov. 13, 1985.

(6)* National Toxicology Program, Toxicology and Carcinogenesis Studies of 1,4-Dichlorobenzene in F344 Rats and B6C3F$_1$ Mice (Gavage Studies), final report, 1987 (Technical Report Series No. 319).

(7) U.S. Environmental Protection Agency Ground Water Supply Survey January 1983.

(8) U.S. Environmental Protection Agency, Criteria and Standards Division. Criteria Document for ortho-Dichlorobenzene, meta-Dichlorobenzene, and parap-Dichlorobenzene. (June 1987)

The starred (*) documents are available for a fee from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. The toll-free number is 703/487-4650. These documents are also available for review at the Drinking Water Supply Branch Office in EPA's Regional Offices.

List of Subjects in 40 CFR Parts 141 and 142

Chemicals, Reporting and record-keeping requirements, Water supply, Administrative practice and procedure.

Dated: June 19, 1987.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

Therefore, 40 CFR Parts 141 and 142 are amended as follows:

PART 141—[AMENDED]

1. In Part 141:

a. The authority citation for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300g-1, 300g-3, 300j-4, 300g-6, and 300j-9.

b. In § 141.2, the existing paragraph designations are removed, the existing paragraphs are arranged in alphabetical order, and the following new definitions are added:

§ 141.2. Definitions.

* * * * *

"Best available technology" or "BAT" means the best technology, treatment techniques, or other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purposes of setting MCLs for synthetic organic chemicals, any BAT must be at least as effective as granular activated carbon.

* * * * *

"Non-transient non-community water system or "NTNCWS" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year.

* * * * *

"Point-of-entry treatment device" is a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

"Point-of-use treatment device" is a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

* * * * *

c. A new paragraph (g) is added to § 141.24 to read as follows:

§ 141.24 Organic chemicals other than total trihalomethanes, sampling and analytical requirements.

* * * * *

(g) Analysis of the contaminants listed in § 141.61(a) for purposes of determining compliance with the maximum contaminant levels shall be conducted as follows:

(1) Ground-water systems shall sample at points of entry to the distribution system representative of each well. Sampling must be conducted at the same location or a more representative location each quarter. Ground-water systems must sample every three months for each entry point to the distribution system except as provided in paragraph (g)(8)(i) of this section.

(2) Surface water systems shall sample at points in the distribution system representative of each source or at entry points to the distribution system after any application of treatment. Surface water systems must sample each source every three months except as provided in paragraph (g)(8)(ii) of this section. Sampling must be conducted at the same location or a more representative location each quarter.

(3) If the system draws water from more than one source and sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions.

(4) All community water systems and non-transient, non-community water systems serving more than 10,000 people shall analyze all distribution or entry-point samples, as appropriate, representing all source waters beginning no later than January 1, 1988. All community water systems and non-transient non-community water systems serving from 3,300 to 10,000 people shall analyze all distribution or entry-point samples, as required in this paragraph (g), representing source waters no later than January 1, 1989. All other community and non-transient, non-community water systems shall analyze distribution or entry-point samples, as required in this paragraph (g), representing all source waters beginning no later than January 1, 1991.

(5) The State or EPA may require confirmation samples for positive or negative results. If a confirmation sample(s) is required by EPA or the State, then the sample result(s) should be averaged with the first sampling result and used for compliance determination in accordance with (g)(9) of this section. States have discretion to delete results of obvious sampling errors from this calculation.

(6) Analysis for vinyl chloride is required only for ground water systems that have detected one or more of the following two-carbon organic compounds: Trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, or 1,1-dichloroethylene. The analysis for vinyl chloride is required at each distribution or entry point at which one or more of the two-carbon organic compounds were found. If the first analysis does not detect vinyl chloride, the State may reduce the frequency of vinyl chloride monitoring to once every three years for that sample location or other sample locations which are more representative of the same source. Surface water systems may be required to analyze for vinyl chloride at the discretion of the State.

(7) A State or individual public water systems may choose to composite up to five samples from one or more public water systems. Compositing of samples is to be done in the laboratory by the procedures listed below. Samples should be analyzed within fourteen days of collection. If any organic contaminant listed in § 141.61(a) VOC is detected in the original composite sample, a sample from each source that made up the composite sample must be reanalyzed individually within fourteen days from sampling. The sample for reanalysis cannot be the original sample but can be a duplicate sample. If duplicates of the original samples are not available, new samples must be taken from each source used in the original composite and analyzed for VOCs. Reanalysis must be accomplished within fourteen days of the second sample. To composite samples, the following procedure must be followed:

(i) Compositing samples prior to GC analysis.

(A) Add 5 ml or equal larger amounts of each sample (up to 5 samples are allowed) to a 25 ml glass syringe. Special precautions must be made to maintain zero headspace in the syringe.

(B) The samples must be cooled at 4° C during this step to minimize volatilization losses.

(C) Mix well and draw out a 5-ml aliquot for analysis.

(D) Follow sample introduction, purging, and desorption steps described in the method.

(E) If less than five samples are used for compositing, a proportionately smaller syringe may be used.

(ii) Compositing samples prior to GC/MS analysis.

(A) Inject 5-ml or equal larger amounts of each aqueous sample (up to 5 samples are allowed) into a 25-ml purging device using the sample introduction technique described in the method.

(B) The total volume of the sample in the purging device must be 25 ml.

(C) Purge and desorb as described in the method.

(8) The State may reduce the monitoring frequency specified in paragraphs (g) (1) and (2) of this section, as explained in this paragraph as follows:

(i) The monitoring frequency for ground-water systems is as follows:

(A) When VOCs are not detected in the first sample (or any subsequent samples that may be taken) and the system is not vulnerable as defined in paragraph (g)(8)(iv) of this section, monitoring must be repeated every 5 years.

(B) When VOCs are not detected in the first sample (or any subsequent sample that may be taken) and the system is vulnerable as defined in paragraph (g)(8)(iv) of this section,

(*1*) Monitoring must be repeated every 3 years for systems >500 connections.

(*2*) Monitoring must be repeated every 5 years for system ≤500 connections.

(C) If VOCs are detected in the first sample (or any subsequent sample that may be taken), regardless of vulnerability, monitoring must be repeated every 3 months, as required under paragraph (g)(1) of this section.

(ii) The repeat monitoring frequency for surface water systems is as follows:

(A) When VOCs are not detected in the first year of quarterly sampling (or any other subsequent sample that may be taken) and the system is not vulnerable as defined in paragraph g(8)(iv), monitoring is only required at state discretion.

(B) When VOCs are not detected in the first year of quarterly sampling (or any other subsequent sample that may be taken) and the system is vulnerable as defined in paragraph (g)(8)(iv) of this section,

(*1*) Monitoring must be repeated in three years (for systems >500 connections.)

(*2*) Monitoring must be repeated every five years (for systems ≤500 connections.)

(C) When VOCs are detected in the first year of quarterly sampling (or any other subsequent sample that may be taken), regardless of vulnerability, monitoring must be repeated every 3 months, as required under paragraph (g)(2) of this section.

(iii) States may reduce the frequency of monitoring to once per year for a ground-water system or surface water system detecting VOCs at levels consistently less than the MCL for three consecutive years.

(iv) Vulnerability of each public water system shall be determined by the State based upon an assessment of the following factors:

(A) Previous monitoring results.

(B) Number of persons served by public water system.

(C) Proximity of a smaller system to a larger system.

(D) Proximity to commercial or industrial use, disposal, or storage of Volatile Synthetic Organic Chemicals.

(E) Protection of the water source.

(v) A system is deemed to be vulnerable for a period of three years after any positive measurement of one or more contaminants listed in either

§ 141.61(a) or § 141.40(e) except for trihalomethanes or other demonstrated disinfection by-products.

(9) Compliance with § 141.61(a) shall be determined based on the results of running annual average of quarterly sampling for each sampling location. If one location's average is greater than the MCL, then the system shall be deemed to be out of compliance. If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, only that part of the system that exceeds any MCL as specified in Section 141.61(a) will be deemed out of compliance. States may reduce the public notice requirement to that portion of the system which is out of compliance. If any one sample result would cause the annual average to be exceeded, then the system shall be deemed to be out of compliance immediately. For systems that only take one sample per location because no VOCs were detected, compliance shall be based on that one sample.

(10) Analysis under this paragraph shall be conducted using the following EPA methods or their equivalent as approved by EPA. These methods are contained in "Methods for the Determination of Organic Compounds in Finished Drinking Water and Raw Source Water," September 1986, available from Environmental and Support Laboratory (EMSL), EPA, Cincinnati, OH 45268 or the State.

(i) Method 502.1, "Volatile Halogenated Organic Chemicals in Water by Purge and Trap Gas Chromatography."

(ii) Method 503.1, "Volatile Aromatic and Unsaturated Organic Compounds in Water by Purge and Trap Gas Chromatography."

(iii) Method 524.1, "Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography/Mass Spectrometry."

(iv) Method 524.2, "Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography/Mass Spectrometry."

(v) Method 502.2, "Volatile Organic Compounds in Water by Purge and Trap Capillary Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series."

(11) Analysis under this section shall only be conducted by laboratories that have received conditional approval by EPA or the State according to the following conditions:

(i) To receive conditional approval to conduct analyses for benzene, vinyl chloride, carbon tetrachloride, 1,2-dichloroethane, trichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, and paradichlorobenzene the laboratory must:

(A) analyze Performance Evaluation samples which include these substances provided by EPA Environmental Monitoring and Support Laboratory or equivalent samples provided by the State.

(B) achieve the quantitative acceptance limits under paragraphs (g)(11)(i)(C) and (g)(11)(i)(D) of this section for at least six of the seven subject organic chemicals. States may allow fewer than six of the seven.

(C) achieve quantitative results on the analyses performed under (g)(11)(i)(A) that are within ±20 percent of the actual amount of the substances in the Performance Evaluation sample when the actual amount is greater than or equal to 0.010 mg/l.

(D) achieve quantitative results on the analyses performed under (g)((11)(i)(A) of this section that are within ±40 percent of the actual amount of the substances in the Performance Evaluation sample when the active amount is less than 0.010 mg/l.

(E) achieve a method detection limit of 0.0005 mg/l, according to the procedures in Appendix B of Part 136.

(F) be currently approved by EPA or the State for the analyses of trihalomethanes under § 141.30.

(ii) To receive conditional approval for vinyl chloride, the laboratory must:

(A) Analyze Performance Evaluation samples provided by EPA Envionmental Monitoring and Support Laboratory or equivalent samples provided by the State.

(B) Achieve quantitative results on the analyses performed under (g)(11)(ii)(A) of this section that are within ±40 percent of the actual amount of vinyl chloride in the Performance Evaluation sample.

(C) Achieve a method detection limit of 0.0005 mg/l, according to the procedures in Appendix B of Part 136.

(D) Receive approval or be currently approved by EPA or the State under (g)(11)(i) of this section.

(12) States have the authority to allow the use of monitoring data collected after January 1, 1983, for purposes of monitoring compliance. If the data is consistent with the other requirements in this paragraph, States may use that data to represent the initial monitoring if the system is determined by the State not to be vulnerable under the requirements of this section. In addition, the results of EPA's Ground Water Supply Survey can be used in a similar manner for systems supplied by a single well.

(13) States may increase required monitoring where necessary to detect variations within the system.

(14) The State has the authority to determine compliance or initiate enforcement action based upon analytical results and other information compiled by their sanctioned representatives and agencies.

(15) A public water system supplying fewer than 150 service connections shall be treated as complying with the monitoring requirements if the owner or operator sends a letter to the State specifying that their system is available for sampling. No samples may be sent to the State unless so requested. This letter must be sent to the State no later than January 1, 1991.

(16) States may exempt a public water system that obtains treated water from another public water system serving more than 10,000 persons from conducting compliance monitoring for the organic chemicals under § 141.61(a), provided that the system from which the water is obtained has conducted the analyses required under § 141.61(a).

(17) Public water systems exempted by the State under (g)(16) and which disinfect are required to monitor under § 141.40.

(18) Each approved laboratory must determine the method detection limit (MDL), as defined in Appendix B to Part 136, at which it is capable of detecting VOCs. The acceptable MDL is 0.0005 mg/l. This concentration is the detection level for purposes of paragraphs (g) (5), (6), (7), and (8) of this section.

d. Section 141.32 is amended by revising the first phrase of paragraph (a) to read as follows:

§ 141.32 Public notification.

(a) If a community water system or non-transient non-community water systems fails to comply with an applicable maximum contaminant level established in Subpart B or G, * * *

* * * * *

e. A new § 141.35 is added to Subpart D to read as follows:

§ 141.35 Reporting and public notification for certain unregulated contaminants.

(a) The requirements of this section only apply to the contaminants listed in § 141.40.

(b) The owner or operator of a community water system or non-transient, non-community water system who is required to monitor under § 141.40 shall send a copy of the results of such monitoring within 30 days of receipt and any public notice under paragraph (d) of this section to the State.

(c) The State, or the community water system or non-transient, non-community water system if the State has not adopted regulations equivalent to § 141.40, shall furnish the following information to the Administrator for each sample analyzed under § 141.40:

(1) Results of all analytical methods, including negatives;

(2) Name and address of the system that supplied the sample;

(3) Contaminant(s);

(4) Analytical method(s) used;

(5) Date of sample;

(6) Date of analysis.

(d) The owner or operator shall notify persons served by the system of the availability of the results of sampling conducted under § 141.40 by including a notice in the first set of water bills issued by the system after the receipt of the results or written notice within three months. The notice shall identify a person and supply the telephone number to contact for information on the monitoring results.

f. Section 141.40 is revised to read as follows:

§ 141.40 Special monitoring for organic chemicals.

(a) All community and non-transient, non-community water systems shall monitor for the contaminants listed in paragraph (e) in this section by date specified in Table 1:

TABLE 1.—MONITORING COMPLETION DATE BY SYSTEM SIZE

Number of persons served	Monitoring to begin no later than—
Over 10,000	Jan. 1, 1988
3,300 to 10,000	Jan. 1, 1989.
Less than 3,300	Jan. 1, 1991.

(b) Surface water systems shall sample in the distribution system representative of each water source or at entry points to the distribution system. The minimum number of samples is one year of quarterly samples per water source.

(c) Ground water systems shall sample at points of entry to the distribution system representative of each well. The minimum number of samples is one sample per entry point to the distribution system.

(d) The State may require confirmation samples for positive or negative results.

(e) Community water systems and non-transient, non-community water systems shall monitor for the following contaminants except as provided in paragraph (f) of this section:

(1) Chloroform
(2) Bromodichloromethane
(3) Chlorodibromomethane
(4) Bromoform
(5) trans-1,2-Dichloroethylene
(6) Chlorobenzene
(7) m-Dichlorobenzene
(8) Dichloromethane
(9) cis-1,2-Dichloroethylene
(10) o-Dichlorobenzene
(11) Dibromomethane
(12) 1,1-Dichloropropene
(13) Tetrachloroethylene
(14) Toluene
(15) p-Xylene
(16) o-Xylene
(17) m-Xylene
(18) 1,1-Dichloroethane
(19) 1,2-Dichloropropane
(20) 1,1,2,2-Tetrachloroethane
(21) Ethylbenzene
(22) 1,3-Dichloropropane
(23) Styrene
(24) Chloromethane
(25) Bromomethane
(26) 1,2,3-Trichloropropane
(27) 1,1,1,2-Tetrachloroethane
(28) Chloroethane
(29) 1,1,2-Trichloroethane
(30) 2,2-Dichloropropane
(31) o-Chlorotoluene
(32) p-Chlorotoluene
(33) Bromobenzene
(34) 1,3-Dichloropropene
(35) Ethylene dibromide (EDB)
(36) 1,2-Dibromo-3-chloropropane (DBCP)

(f) Community water systems and non-transient non-community water systems must monitor for EDB and DBCP only if the State determines they are vulnerable to contamination by either or both of these substances. For the purpose of this paragraph, a vulnerable system is defined as a system which is potentially contaminated by EDB and DBCP, including surface water systems where these two compounds are applied, manufactured, stored, disposed of, or shipped upstream, and for ground-water systems in areas where the compounds are applied, manufactured, stored, disposed of, or shipped in the ground-water recharge basin, or for ground-water systems that are in proximity to underground storage tanks that contain leaded gasoline.

(g) Analysis under this section shall be conducted using the recommended EPA methods as follows, or their equivalent as determined by EPA: 502.1, "Volatile Halogenated Organic Compounds in Water by Purge and Trap Gas Chromatography," 503.1, "Volatile Aromatic and Unsaturated Organic Compounds in Water by Purge and Trap Gas Chromatography," 524.1, "Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography/Mass Spectrometry," 524.2, "Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography/Mass Spectrometry, or 502.2, "Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series." These methods are contained in "Methods for the Determination of Organic Compounds in Finished Drinking Water and Raw Source Water," September 1986, available from Environmental Monitoring and Support Laboratory (EMSL), EPA, Cincinnati, Ohio 45268. Analysis of 1,2-dibromo-3-chloropropane (DBCP) and 1,2-dibromoethane (EDB) shall be conducted by Method 504, "Measurement of 1,2,-Dibromoethane (EDB) and 1,2-Dibromo-3-chloropropane (DBCP) in Drinking Water by Microextraction and Gas Chromatography," September 1986, available from EMSL, Cincinnati, Ohio 45268 or the State.

(h) Analysis under this section shall only be conducted by laboratories approved under § 141.24(g)(11). In addition to the requirements of § 141.24(g)(11), each laboratory analyzing for EDB and DBCP must achieve a method detection limit for EDB and DBCP of 0.00002 mg/l, according to the procedures in Appendix B of Part 136.

(i) Public water systems may use monitoring data collected any time after January 1, 1983 to meet the requirements for unregulated monitoring, provided that the monitoring program was consistent with the requirements of this section.

(j) Monitoring for the following compounds is required at the discretion of the State:

(1) 1,2,4-Trimethylbenzene
(2) 1,2,4-Trichlorobenzene
(3) 1,2,3-Trichlorobenzene
(4) n-Propylbenzene
(5) n-Butylbenzene
(6) Naphthalene
(7) Hexachlorobutadiene
(8) 1,3,5-Trimethylbenzene
(9) p-Isopropyltoluene
(10) Isopropylbenzene
(11) Tert-butylbenzene
(12) Sec-butylbenzene
(13) Fluorotrichloromethane
(14) Dichlorodifluoromethane
(15) Bromochloromethane

(k) Instead of performing the monitoring required by this section, a community water system or non-transient, non-community water system serving fewer than 150 service connections may send a letter stating that its system is available for sampling.

(l) All community and non-transient, non-community water systems shall repeat the monitoring required in § 141.40 no less frequently than every five years from the dates specified in § 141.40(a).

g. Section 141.50 is amended by revising paragraph (b) to read as follows:

§ 141.50 Maximum contaminant level goals for organic contaminants.

* * * * *

(b) MCLGs for the following contaminants are as indicated:

Contaminant	MCLG in mg/l
(1) 1,1-Dichloroethylene	0.007
(2) 1,1,1-Trichloroethane	0.20
(3) para-Dichlorobenzene	0.075

h. Section 141.60 is revised to read as follows:

§ 141.60 Effective dates.

(a) The effective date for § 141.61 is January 9, 1989.

(b) The effective date for § 141.62(b)(2) is October 2, 1987.

i. Section 141.61 is added as follows:

§ 141.61 Maximum contaminant levels for organic contaminants.

(a) The following maximum contaminant levels for organic contaminants apply to community water systems and non-transient non-community water systems.

CAS No.	Contaminant	Maximum contaminant level in mg/l
71-43-2	Benzene	0.005
75-01-4	Vinyl chloride	0.002
56-23-5	Carbon tetrachloride	0.005
107-06-2	1,2-Dichloroethane	0.005
79-01-6	Trichloroethylene	0.005
75-35-4	1,1-Dichloroethylene	0.007
71-55-6	1,1,1-Trichloroethane	0.20
106-46-7	para-Dichlorobenzene	0.075

(b) The Administrator, pursuant to section 1412 of the Act, hereby identifies the following as the best technology, treatment techniques, or other means generally available for achieving compliance with the maximum contaminant level for synthetic organic chemicals (§ 141.61(a)): Central treatment using packed tower aeration; central treatment using granular activated carbon for all these chemicals except vinyl chloride.

j. Part 141 is amended by adding a new Subpart J, consisting of §141.100 and § 141.101, to read as follows. Subparts H and I are reserved.

Subpart J—Use of Non-Centralized Treatment Devices

Sec.

Subpart J—Use of Non-Centralized Treatment Devices

§ 141.100 Criteria and procedures for public water systems using point-of-entry devices.

(a) Public water systems may use point-of-entry devices to comply with maximum contaminant levels only if they meet the requirements of this section.

(b) It is the responsibility of the public water system to operate and maintain the point-of-entry treatment system.

(c) The public water system must develop and obtain State approval for a monitoring plan before point-of-entry devices are installed for compliance. Under the plan approved by the State, point-of-entry devices must provide health protection equivalent to central water treatment. "Equivalent" means that the water would meet all Primary and Secondary Drinking Water Standards and would be of acceptable quality similar to water distributed by a well-operated central treatment plant. In addition to the VOCs, monitoring must include physical measurements and observations such as total flow treated and mechanical condition of the treatment equipment.

(d) Effective technology must be properly applied under a plan approved by the State and the microbiological safety of the water must be maintained.

(1) The State must require adequate certification of performance, field testing, and, if not included in the certification process, a rigorous engineering design review of the point-of-entry devices.

(2) The design and application of the point-of-entry devices must consider the tendency for increase in heterotrophic bacteria concentrations in water treated with activated carbon. It may be necessary to use frequent backwashing, post-contractor disinfection, and Heterotrophic Plate Count monitoring to ensure that the microbiological safety of the water is not compromised.

(e) All consumers shall be protected. Every building connected to the system must have a point-of-entry device installed, maintained, and adequately monitored. The State must be assured that every building is subject to treatment and monitoring, and that the rights and responsibilities of the public water system customer convey with title upon sale of property.

§ 141.101 Use of other non-centralized treatment devices.

Public water systems shall not use bottled water or point-of-use devices to achieve compliance with an MCL. Bottled water or point-of-use devices may be used on a temporary basis to avoid an unreasonable risk to health.

PART 142—[AMENDED]

2. In Part 142:

a. The authority citation for 40 CFR Part 142 continues to read as follows:

Authority: 42 U.S.C. 300g-2, 300g-3, 300g-4, 300g-5, 300j-4, and 300j-9.

b. A new § 142.56 is added to Subpart F, to read as follows:

§ 142.56 Bottled water and point-of-use devices.

(a) A State may require a public water system to use bottled water or point-of-use devices as a condition for granting an exemption from the requirements of § 141.61(a) of this part.

(b) Public water systems that use bottled water as a condition of obtaining an exemption from the requirements of § 141.61(a) must meet the requirements set out in § 142.62(f) of this part.

(c) Public water systems that use point-of-use devices as a condition for receiving an exemption must meet the requirements set out in § 142.62(g) of this part.

c. A new § 142.62 is added to Subpart G to read as follows:

§ 142.62 Variances from the maximum contaminant levels for synthetic organic chemicals.

(a) The Administrator, pursuant to section 1415(a)(1)(A) of the Act, hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for synthetic organic chemicals: Removal using packed tower aeration; removal using granular activated carbon (except for vinyl chloride).

(b) A State shall require community water systems and non-transient, non-community water systems to install and/or use any treatment method identified in § 141.62(a) as a condition for granting a variance except as provided in paragraph (c). If, after the system's installation of the treatment method, the system cannot meet the MCL, that system shall be eligible for a variance under the provisions of section 1415(a)(1)(A) of the Act.

(c) If a system can demonstrate through comprehensive engineering assessments, which may include pilot plant studies, that the treatment methods identified in § 141.62(a) would only achieve a *de minimis* reduction in contaminants, the State may issue a schedule of compliance that requires the system being granted the variance to examine other treatment methods as a condition of obtaining the variance.

(d) If the State determines that a treatment method identified in paragraph (c) of this section is technically feasible, the Administrator or primacy State may require the system to install and/or use that treatment method in connection with a compliance schedule issued under the provisions of section 1415(a)(1)(A) of the Act. The State's determination shall be based upon studies by the system and other relevant information.

(e) The State may require a public water system to use bottled water or point-of-use devices or other means as a condition of granting a variance from the requirements of § 141.61(a), to avoid an unreasonable risk to health.

(f) Public water systems that use bottled water as a condition for receiving a variance from the requirements of § 141.61(a) must meet the following requirements in either paragraph (f)(1) of (f)(2) of this section in addition to requirements in paragraph (f)(3) of this section:

(1) The Administrator or primacy State must require and approve a monitoring program for bottled water. The public water system must develop and put in place a monitoring program that provides reasonable assurances that the bottled water meets all MCLs. The public water system must monitor a representative sample of the bottled water for all contaminants regulated under § 141.61(a) the first quarter that it supplies the bottled water to the public, and annually thereafter. Results of the monitoring program shall be provided to the State annually.

(2) The public water system must receive a certification from the bottled water company that the bottled water supplied has been taken from an "approved source" as defined in 21 CFR 129.3(a); the bottled water company has conducted monitoring in accordance with 21 CFR 129.80(g) (1) through (3); and the bottled water does not exceed any MCLs or quality limits as set out in 21 CFR 103.35, 110, and 129. The public water system shall provide the certification to the State the first quarter after it supplies bottled water and annually thereafter.

(3) The public water system is fully responsible for the provision of sufficient quantities of bottled water to every person supplied by the public water system, via door-to-door bottled water delivery.

(g) Public water systems that use point-of-use devices as a condition for obtaining a variance from NPDWRs for volatile organic compounds must meet the following requirements;

(1) It is the responsibility of the public water system to operate and maintain the point-of-use treatment system.

(2) The public water system must develop a monitoring plan and obtain State approval for the plan before point-of-use devices are installed for compliance. This monitoring plan must provide health protection equivalent to a monitoring plan for central water treatment.

(3) Effective technology must be properly applied under a plan approved by the State and the microbiological safety of the water must be maintained.

(4) The State must require adequate certification of performance, field testing, and, if not included in the certification process, a rigorous engineering design review of the point-of-use devices.

(5) The design and application of the point-of-use devices must consider the tendency for increase in heterotrophic bacteria concentrations in water treated with activated carbon. It may be necessary to use frequent backwashing, post-contractor disinfection, and Heterotrophic Plate Count monitoring to ensure that the microbiological safety of the water is not compromised.

(6) All consumers shall be protected. Every building connected to the system must have a point-of-use device installed, maintained, and adequately monitored. The State must be assured that every building is subject to treatment and monitoring, and that the rights and responsibilities of the public water system customer convey with title upon sale of property.

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Wednesday
July 8, 1987

Part III

Environmental Protection Agency

40 CFR Part 141

Drinking Water; Proposed Substitution of Contaminants and Proposed List of Additional Substances Which May Require Regulation Under the Safe Drinking Water Act

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[OW-FRL 3215-2]

Drinking Water; Substitution of Contaminants and Priority List of Additional Substances Which May Require Regulation Under the Safe Drinking Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed contaminants for substitution and proposed drinking water priority list.

SUMMARY: The Safe Drinking Water Act ("SDWA" or "Act") was amended in 1986 to require EPA to regulate 83 contaminants in drinking water by 1989. The SDWA allows EPA to substitute up to seven contaminants on the list of 83 contaminants if regulation of the substitutes is more likely to be protective of public health. The Act also requires EPA to establish a priority list of contaminants which may have any adverse effects on the health of persons and which are known or anticipated to occur in public water systems and may require regulation under the Act. This notice proposes seven contaminants for substitution and provides notice of the substances under consideration for the first priority list. Information is also provided on EPA's procedure for selecting substances for substitution and for compiling the Drinking Water Priority List (DWPL).

DATES: Written comments should be submitted on or before September 8, 1987. After consideration of the comments, a final list of substitutes and contaminants will be published in the Federal Register.

A public hearing has been scheduled for August 4, 1987, from 9:00 a.m. to 12:00 p.m., in Washington, D.C.—EPA (North Conference Center, Room #1), Waterside Mall, 401 M St., S.W., Washington, D.C. 20460. If you plan to present comments, contact: Marcella DePont, EPA (WH-550D), 401 M St., S.W., Washington, D.C. 20460. Phone: 202/382-3022.

ADDRESSES: Send written comments on this notice to Substitutes/DWPL Comment Clerk, Criteria and Standards Division, Office of Drinking Water (WH-550), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. References, supporting documentation, and any comments received are in the public docket. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. You should call Ms. Colleen Campbell at 202-382-3027 for an appointment to inspect the docket. In addition, supporting documents cited in this notice will be available for inspection at the Drinking Water Branches in EPA's Regional Offices (see addresses below).

FOR FURTHER INFORMATION CONTACT: Arthur H. Perler, Chief, Science and Technology Branch, Criteria and Standards Division, Office of Drinking Water, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Telephone 202-382-3022.

EPA Regional Offices

I. JFK Federal Bldg., Room 2203, Boston, MA 02203, Phone: (617) 853-3610, Jerome Healy
II. 26 Federal Plaza, Room 824, New York, NY 10278, Phone (212) 264-1800, Walter Andrews
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IX. 215 Fremont Street, San Francisco, CA 94105, Phone: (415) 974-8076, William Thurston
X. 1200 Sixth Avenue, Seattle, WA 98101, Phone: (206) 399-4092, Richard Thiel

SUPPLEMENTARY INFORMATION:

Abbreviations Used in This Notice

ANPRM: Advance Notice of Proposed Rulemaking
BAT: Best Available Technology
CERCLA: Comprehensive Environmental Response, Compensation, and Liability Act (Superfund)
CWSS: Community Water Supply Survey
DWPL: Drinking Water Priority List
GWSS: Ground Water Supply Survey
MCL: Maximum Contaminant Level
MCLG: Maximum Contaminant Level Goal
MDL: Method Detection Limit
NAS: National Academy of Sciences
NIPDWR: National Interim Primary Drinking Water Regulation
NIRS: National Inorganics and Radionuclides Survey
NOAEL: No Observed Adverse Effect Level
NOMS: National Organics Monitoring Survey
NORS: National Organics Reconnaissance Survey
NPDWR: National Primary Drinking Water Regulations (includes both Interim and Revised National Primary Drinking Water Regulations)
NPL: National Priorities List (Superfund)
NPS: National Pesticide Survey
NSP: National Screening Program
NTP: National Toxicology Program (U.S. Govt.)
RMCL: Recommended Maximum Contaminant Level
RWS: Rural Water Survey
SDWA: The Safe Drinking Water Act, also referred to as "the Act," as amended in 1986
SMCL: Secondary Maximum Contaminant Level
SOC: Synthetic Organic Chemical
VOC: Volatile Organic Chemical

I. Statutory Requirements

The Safe Drinking Water Act ("SDWA" or "Act") (42 U.S.C. 300f, *et seq.*) was passed in 1974. The Act required EPA to establish national interim primary drinking water regulations (NIPDWR) that apply to public drinking water systems and that "specified contaminants which in the judgment of the Administrator, may have any adverse effect on the health of persons" [Section 1401(1)]. The Act required EPA to establish national primary drinking water regulations that include maximum contaminant levels

(MCLs) or treatment technique requirements. The NIPDWR were to be revised based upon a comprehensive assessment of potential adverse effects of contaminants in drinking water. The revised regulations were to include recommended maximum contaminant levels (RMCLs). RMCLs were to be established "at a level at which, in the Administrator's judgment . . . . no known or anticipated adverse effects of the health of persons occur and which allows an adequate margin of safety" [Section 1412(b)(1)(B)]. EPA was to promulgate MCLs or treatment technique requirements for each contaminant for which an RMCL was promulgated. The MCL was to be as close to the RMCL as is feasible (with the use of the best technology, treatment techniques, and other means which are generally available, taking costs into consideration) [Section 1412(b)(3)].

The Act was amended in 1986 and renamed RMCLs "maximum contaminant level goals" (MCLGs) but did not change the definition. The Amendments also listed 83 specific drinking water contaminants for which EPA must publish MCLGs and promulgate National Primary Drinking Water Regulations (NPDWRs) on a specified schedule ("list of 83 Contaminants;" see Appendix A) [Section 1412(b)].

Under the Act, EPA may make up to seven substitutions to the list of 83 contaminants (Section 1412(b)(2)). In order to make substitutions to the list, the Administrator must determine (after notice and opportunity for comment) that "regulation of the substitutes . . . is more likely to be protective of public health (taking into account the schedule for regulation) . . . "than regulation of the originally listed contaminants that would be removed from the list of 83 contaminants. [Section 1412(b)(2)]. EPA is to propose the list of substitutes by June 19, 1987. After a 60-day public comment period, EPA must publish a final list of substitute contaminants along with the list of contaminants being replaced and responses to significant comments received [Section 1412(b)(2)(B)]. All contaminants EPA removes from the original list of 83 contaminants must be placed on the priority list of contaminants being considered for regulation under the SDWA to be published by January 1, 1988 (described below) [Section 1412(b)(2)(C)]. EPA's selection of substitutions to the list of 83 contaminants are specifically exempted from judicial review under the Act [Section 1412(b)(2)(D)].

The Act requires EPA to publish a priority list of additional contaminants that are known or anticipated to occur in drinking water and which may require regulation under the Act ("drinking water priority list") [Section 1412(b)(3)]. EPA must publish the first list by January 1, 1988, and subsequent lists every three years thereafter. EPA must propose at least 25 NPDWRs within 24 months of publication of this list, and promulgate 25 NPDWRs within 36 months of publication of the first triennial list. In selecting contaminants for the list, EPA must consider, at a minimum, substances referred to in Section 101(14) of the Comprehensive Environmental Reponse, Compensation, and Liability Act of 1980 (CERCLA or Superfund) and pesticides registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) [Sections 1412(b)(2)(C)–(D) and 1412(b)(3)(A)–(B)].

The Act requires EPA to form an advisory group to assist in developing the drinking water priority list. This group must include, but is not limited to, participants from the National Toxicology Program and the Environmental Protection Agency's Offices of Drinking Water, Pesticides, Toxic Substances, Ground Water, Solid Waste and Emergency Response and other offices deemed appropriate by the Administrator [Section 1412(b)(3)(B)].

II. Background

In 1975, 1976, and 1979, EPA promulgated National Interim Primary Drinking Water Regulations (NIPDWR), including MCLs and monitoring and reporting requirements, as directed by the Safe Drinking Water Act of 1974. These NIPDWRs cover a total of 26 contaminants, including 18 which were based, in large part, on the 1962 U.S. Public Health Service standards for drinking water. In setting the primary drinking water regulations under the SDWA, as enacted in 1974, the Agency had wide discretion to select substances for regulation. The only specific direction given by the SDWA was that EPA was to promulgate regulations for contaminants that may have any adverse effect on the health of persons.

As required by the Act, EPA arranged for the National Academy of Sciences (NAS) to conduct a series of studies to assess the health effects of contaminants in drinking water. In addition, EPA requested the National Drinking Water Advisory Council (NDWAC) to provide advice on the general approach to standard setting. The NDWAC recommended that contaminants be considered for regulation if there was sufficient health effects data indicating occurrence in drinking water and/or the potential for more widespread occurrence in drinking water.

EPA identified 83 contaminants as candidates for regulation under the Act in two Advance Notices of Proposed Rulemaking (ANPRMs) (47 FR 9350, March 4, 1982; 48 FR 45502, October 5, 1983). The 1986 amendments to the Act require EPA to regulate this list of 83 contaminants within 36 months of enactment (except that up to seven may be substituted, as explained above).

EPA has published MCLGs and proposed NPDWRS including MCLs for a group of eight volatile organic contaminants (50 FR 46880 and 46902, November 13, 1985), published a RMCL (now MCLG) and promulgated a NPDWR for fluoride (51 FR 11396, April 2, 1986), and proposed MCLGs for a group of 43 inorganic chemicals, synthetic organic chemicals, pesticides and microbiological contaminants (50 FR 46936, November 13, 1985). Most of these contaminants are included on the statutory list of 83 contaminants.

From the remaining contaminants on the statutory list of 83 contaminants, EPA has identified certain contaminants which it believes do not warrant regulation at this time. EPA has also identified seven contaminants which it believes are more likely to pose a hazard to public health, and the regulation of which will be more protective of public health than the seven being replaced on this list. As noted earlier, the seven contaminants being replaced on the list of 83 contaminants must appear on the drinking water priority list which EPA must publish by January 1, 1988.

EPA believes that, with the promulgation of regulations for the list of 83 contaminants (with the seven substitutions), most of the significant drinking water contaminants will have been regulated. The remaining drinking water problems are primarily in the area of disinfection by-products and pesticides. The triennial priority list of drinking water contaminants will be the primary vehicle by which EPA considers substances for future regulation (i.e., MCLGs and MCLs are to be set for at least 25 contaminants from the list every three years).

III. Substitutes

A. Criteria Used to select Substitute Contaminants

As noted above, the 1986 amendments to the SDWA allow for substitutions to the list of 83 contaminants to be regulated if the Administrator determines that regulations of the

substitutes is more likely to be protective of public health than regulation of the contaminants being replaced. To make this determination, EPA must consider several factors associated with both the contaminants to be substituted and the contaminants being replaced on the list. The most import of these factors are the occurrence of potential for occurrence of the contaminants in drinking water and the severity of the human health hazards posed by the contaminants.

As noted above, the list of 83 contaminants was taken directly from two ANPRMs (47 FR 9350, March 4, 1982, and 48 FR 45502, October 5, 1983). In these notices, EPA listed the contaminants as possible candidates for regulation under the SDWA and requested public comment on the need for regulation and supporting data. By November 13, 1985, EPA has proposed or promulgated MCLGs for a total of 53 contaminants, including seven which were not listed in the ANPRMs; data had become available showing that regulation of those additional contaminants was warranted under the SDWA (49 FR 24330 and 50 FR 46936). EPA determined that the 52 contaminants were appropriate for regulation based upon decision criteria it presented in the MCLG proposals.

EPA believed it was not appropriate to use a specific formula to apply selection criteria because of the many variables associated with contaminants in drinking water; however, the Agency developed a decision-making "logic train" which incorporated selection criteria into a framework which to make determinations. EPA is using the same criteria in this notice. Given the variability associated with human health and exposure aspects of drinking water contaminants and the directives of the SDWA, EPA believes that decision criteria must remain flexible, so that a case-by-case decision can be made for each contaminant. However, the decision criteria do set forth and operative framework. For each contaminant, the essential factors in the analysis are:

- Are there sufficient health effects data upon which to base an MCLG?
- Are there potential adverse health effects from exposure to the contaminant via ingestion?
- Does the contaminant occur in drinking water? Has the contaminant been detected in significant frequencies and in a widespread manner?
- If data are limited on the frequency and nature of contamination, is there a significant potential for drinking water contamination?

Each of these factors is briefly discussed below.

Health Effects. Consideration of the potential health effects of a chemical encompasses (1) the suitability of the available data for assessing the toxicity of the chemical, and (2) the possibility of human health concern from exposure in drinking water. The human health concerns relate to acute and chronic toxicities, carcinogenic effects including effects in animals or humans, and other toxicological concerns, such as whether or not a chemical is a mutagen or teratogen. The evaluation of these potential health effects also considers the EPA guidelines for risk assessment promulgated September 24, 1986. These include guidelines for carcinogenicity risk assessment (51 FR 33992), mutagenicity risk assessment (51 FR 34006), developmental toxicants (51 FR 34028) and estimated exposure (51 FR 34042). In the absence of potential carcinogenic risks, most estimated allowable exposure levels will be considerably higher than usually found in drinking water.

EPA classifies compounds for carcinogenicity potential according to the weight of evidence of carcinogenicity based on EPA's Guidelines for Carcinogen Risk Assessment which specify five classifications:

Group A—Human carcinogen (sufficient evidence from epidemiological studies).

Group B—Probable human carcinogen.

Group B1—At least limited evidence of carcinogenicity in humans.

Group B2—Usually a combination of sufficient evidence in animals and inadequate data in humans.

Group C—Possible human Carcinogen (limited evidence of carcinogenicity in the absence of human data).

Group D—Not classifiable (inadequate human and animal evidence of carcinogenicity).

Group E—No evidence of carcinogenicity for humans (no evidence of carcinogenicity in at least two adequate animal tests in different species or in both epidemiological and animal studies).

Occurrence in Drinking Water. In reviewing occurrence data, EPA considers the frequency of occurrence, the level of occurrence, and the extent of the population exposed. EPA examines the available data to determine how well they represent national occurrence, and also evaluates the quality of the data.

EPA has conducted a number of national sampling surveys to assess occurrence of certain contaminants in drinking water across the country. In addition, a number of States have conducted surveys of public water systems for certain contaminants, and EPA has conducted monitoring around hazardous waste sites. The EPA data also include NIPDWR compliance monitoring data, accessed through the Federal Reporting Data System (FRDS). These surveys constitute the best sources of available data on occurrence of contaminants in drinking water.

Eight national drinking water surveys have been conducted by EPA since 1975. These include:

- National Organics Reconnaissance Survey (NORS).
- National Organics Monitoring Survey (NOMS).
- National Screening Programs for Organics in Drinking Water (NSP).
- Community Water Supply Surveys (CWSS; conducted in 1969 and 1978).
- Rural Water Survey (RWS).
- Ground Water Supply Survey (GWSS).
- National Inorganics and Radionuclides Survey (NIRS).

NORS was conducted in 1975 to determine the level of six SOCs in 80 cities across the country. These water supplies served 36 million individuals.

NOMS, conducted in 1976–1977, extended EPA's knowledge of the occurrence of volatile and synthetic organic compounds in drinking water. One hundred and thirteen cities using surface water were included in this study.

NSP, conducted between June 1977 and March 1981, provided a broadened examination of VOCs and SOCs in drinking water. The compounds sampled included 23 hydrocarbons, 6 aromatics, 22 pesticides, phenols, and acids. One hundred and sixty-six water supplies, mosty using surface water, located in 33 States participated in the study.

Two different CWSS studies have been conducted. The 1969 CWSS provided information on the level of inorganics in drinking water. Over 950 cities throughout the United States participated in the study. A second CWSS was conducted in 1978 providing information on both inorganic and volatile organic contaminants.

The RWS was conducted in 1978 to examine the quality of rural water supplies. The level of both inorganic and volatile organic contaminants was determined for over 800 samples.

The CWSS, focusing on ground water supplies, was conducted in 1980–1981. This study provided information on the occurrence of 34 VOCs in nearly 1,000 water supplies.

The NIRS was conducted during 1985–1987; 1,200 public water systems were sampled for a broad array of inorganic chemicals and radionuclides.

Data on the occurrence of pesticides in drinking water also comes from numerous special studies conducted by the EPA Office of Pesticide Programs and U.S. Geological Survey. Other sources of information include various State surveys and results of monitoring around hazardous waste sites by federal hazardous waste programs.

Potential for Contamination of Drinking Water. For contaminants that have been detected in drinking water but for which data are limited, EPA analyzed the potential for widespread drinking water contamination. Factors considered in this analylsis in order of importance are as follows:

(1) *Occurrence in Drinking Water Other Than Community Water Supplies.* Certain contaminants have been detected in private wells but not in public water systems. For the most part, these data are associated with pesticides which have been detected during certain studies of pesticide usage and drinking water contamination.

(2) *Direct or Indirect Additives.* Numerous contaminants are in drinking water as a result of direct addition as a water treatment chemical or indirectly through such actions as leaching from pipe coatings or corrosive actions on piping materials. Pesticides registered for use in or around drinking water supplies fall into the category.

(3) *Occurrence in Ambient Surface Water or Ground Water.* Contaminants detected in surface waters or in ground waters through various water quality surveys or in sampling around hazardous waste sites have the potential for contaminating drinking water.

(4) *Presence in Liquid or Solid Waste.* Contaminants known to be in industrial or municipal wastewater effluents or waste ponds or known to be in solid waste being disposed of in landfills have the potential to migrate to drinking water intakes.

(5) *Mobility to Surface Water (run-off) or Groundwater (leaching).* EPA examines the physical/chemical characteristics of contaminants to determine their potential for movement to a drinking water supply. This is essentially an analysis of the fate and transport of contaminants looking toward the potential for contamination of drinking water sources.

(6) *Widespread Dispersive Use Patterns.* This evaluation assesses the characteristics of the use of a contaminant, and the locations of that use that would contribute to potential widespread contamination problems in drinking water.

(7) *Production Rates.* This is an assessment of the amount of contaminant being produced annually to assess if the potential exists for significant contamination.

While the above factors are listed in priority order, EPA generally examines the last four factors collectively to assess the overall potential for drinking water contamination.

Thirteen groups or individuals commented on EPA's selection of contaminants in the November 1985 notice. The commenters generally agreed that health effects and occurrence in drinking water are the most pertinent criteria for selecting contaminants for regulation. Several commenters concurred that there is little justification for promulgating NPDWRs for infrequently found chemicals. Others believed pesticides applied directly to water should get high priority for MCLG development. Other commenters agreed with the EPA criteria that regulations should not be set for contaminants for which there are not sufficient health effects data.

Compilation of Lists. In reviewing contaminants for possible removal from the list of 83 contaminants, EPA first considered the available health effects data and data on occurrence or potential occurrence in drinking water. The health basis for development of primary drinking water regulations is normally either adequate human data or data from an adequate subchronic or chronic toxicity study in an appropriate test animal. For each contaminant reviewed, if such data were available and they suggested that the contaminant would not be expected to cause any adverse health effects, the contaminant was a candidate for replacement. If no such data were available and none were expected to be available within the next one to two years, the contaminant was also considered as a candidate for replacement. In addition, EPA considered contaminants for removal from the list if the available monitoring data indicated little or no occurrence in drinking water supplies or if no occurrence in drinking water was anticipated. All of the contaminants proposed for removal from the list have one or more of these characteristics.

EPA evaluated candidates to be substituted onto the list using the same criteria as applied to the candidates for removal from the list. Adequate health effects and data on occurrence or anticipated occurrence are available to demonstrate potential public health risk for all of these contaminants. In fact, EPA proposed MCLGs for all of the contaminants proposed for substitution (50 FR 46936, November 13, 1985).

B. List of Candidate Contaminants for Removal and Substitution

Based on the criteria described above, EPA proposes to remove the following seven contaminants from the list of 83 contaminants mandated for regulation by Congress:

- Zinc
- Silver
- Aluminum
- Sodium
- Dibromomethane
- Molybdenum
- Vanadium

EPA is also considering for removal other contaminants on the list of 83 contaminants for which it has not proposed MCLGs; for example, sulfate and phthalates, among others. EPA requests public comments on the seven proposed candidates as well as on any of the other contaminants on the list of 83 contaminants (see Appendix A) for which MCLGs have not yet been proposed which may be appropriate for removal (see Appendix B). EPA is not considering removing contaminants for which MCLGs have been proposed because it believes there are adequate data to support regulation of those contaminants.

The seven contaminants which EPA proposes to substitute for the seven removed are:

- Aldicarb sulfoxide
- Aldicarb sulfone
- Ethylbenzene
- Heptachlor
- Heptachlor epoxide
- Styrene
- Nitrite

As noted above, EPA proposed MCLGs for all seven contaminants proposed for addition to the list of 83 contaminants in the November 1985 notice.

C. Discussion of Specific Contaminants

1. Contaminants Proposed for Removal

EPA summarized the available data on the potential health effects and occurrence of the seven contaminants proposed for removal from the list of 83 contaminants (except dibromomethane) in the November 13, 1985, proposal (50 FR 46936). In that notice, EPA did not propose MCLGs for any of these contaminants because regulation did not appear to be warranted at that time due to lack of potential health risks or insufficient health effects data to support a MCLG. A brief discussion of the reasons for proposing removal from the list of 83 contaminants for each

contaminant is presented below, along with a summary of the public comments, if any, to the November 1985 proposal.

1. *No adverse health effects are posed at levels found in drinking water.* The Agency is proposing to remove zinc and silver because currently available data indicate that no adverse health effects are associated with exposure through drinking water and that they do not pose a public health risk. As with any substances, these compounds have some adverse effects, but only at *very* high doses, far above those found in drinking water. These compounds are unlikely to be regulated in the future unless data indicating that they have adverse effects on human health at levels found in drinking water become available.

2. *There are unresolved issues regarding adverse health effects via drinking water exposure.* The Agency is proposing to remove aluminum and sodium from the list because the currently available data leave unresolved issues regarding their potential health effects and the significance of drinking water as a contribution to total exposure. They may be regulated in the future if more definitive data that allow resolution of these issues become available.

3. *There are insufficient health effects data.* The Agency is proposing to remove dibromomethane, molybdenum, and vanadium from the list because the currently available data on potential adverse health effects are insufficient to set MCLGs. These may be regulated as additional data become available.

Each of these compounds is discussed in greater detail below. The **Federal Register** citations in each paragraph refer to the page number on which each contaminant is discussed in the November 1985 MCLG proposal. Generally, the information presented is still current, i.e., although some additional review of these chemicals has occurred in the interim, the conclusions are still correct.

Zinc: EPA is proposing to remove zinc from the list of 83 contaminants because the available data indicate that zinc in drinking water does not pose a public health risk (50 FR 46981). Zinc is nutritionally essential with very low potential for toxicity at the levels which occur in drinking water. The National Academy of Sciences (NAS) Safe Drinking Water Committee concluded that ". . . zinc is an essential nutrient for humans. There is evidence of borderline deficiencies of the element in children in the United States and other parts of the world. . . .The possibility of detrimental health effects arising from zinc consumed in food and drinking water is extremely remote." EPA has, however, established a National Secondary Drinking Water Regulation (NSDWR) for zinc, based upon taste considerations. NSDWRs protect the aesthetics of drinking water (e.g., poor taste, smell, appearance) and set secondary maximum contaminant levels (SMCLs) which are nonenforceable standards. The current SMCL for zinc is 5 mg/1 (40 CFR 143.3). EPA intends to review this level to determine whether it is still appropriate.

EPA received several comments on the November 1985 proposal regarding regulation of zinc in drinking water. Two commenters agreed with the decision not to establish a MCLG for zinc. Another commenter agreed that a SMCL for zinc was appropriate based on aesthetic concerns. One commenter recommended that EPA consider regulating zinc, but provided no data to support the recommendation.

Silver: EPA is proposing to remove silver from the list of 83 contaminants because the available data indicate that the potential effects of human exposure to silver via drinking water are not considered adverse (50 FR 46978). Therefore, EPA did not propose a MCLG for silver in the November 1985 notice.

The only known effect of long-term exposure to silver at levels which might theoretically be found in drinking water is argyria, a grayish discoloration of the skin. This is not considered to be an adverse health effect, but rather is considered a cosmetic effect, as it does not impair functioning of the body or cause other physiological problems.

While silver has an interim MCL, set in 1975, of 0.05 mg/1 (40 CFR 141.11), the November 1985 MCLG proposal did not include a proposed MCLG for silver because EPA now considers argyria as a cosmetic effect. A no-effect level of 0.09 mg/1 to prevent argyria was presented in the November 1985 **Federal Register** notice. To protect against argyria, EPA intends to propose an SMCL. At the time of the SMCL proposal, EPA will propose to delete the current MCL of 0.05 mg/1.

Several water surveys have found silver in groundwater and surface water supplies, although seldom at significant levels. Silver is also used in some point-of-use water treatment devices, which could be the principal source of silver in drinking water and which must be registered by EPA for use under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). To register such devices, registrants must show that use of the devices will not result in silver levels above the interim level.

The Agency received several comments on the November 1985 proposal regarding regulation of silver. Several commenters agreed that no MCLG should be established at this time. Several also disagreed with the calculation of the no-effect level, asserting that the studies used were inappropriate, because only 21 patients were studied, and the silver used was for medical purposes. Others agreed that an SMCL should be established for silver. These comments on the data analysis will be considered in development of the SMCL.

Aluminum: EPA is proposing to remove aluminum from the list of 83 contaminants because of inadequate health effects data (50 FR 46975). Aluminum has low acute toxicity in animals and few data are available from subchronic and chronic animal studies. These data are presently not adequate to support the development of a MCLG. While a relationship between aluminum and Alzheimer's Disease in humans has been suggested in the past, there is no conclusive evidence to suggest that aluminum is a causative agent, and recent reports indicate that genetic factors may predominate in causing some forms of the disease.

Aluminum in drinking water has been associated with dialysis osteomalacia and dialysis encephalopathy when aluminum-containing water was used for preparation of kidney dialysis solutions, although aluminum is not the only inorganic compound that can cause problems when present in dialysis water. Water treatment (ionization and reverse osmosis) now practiced by dialysis centers has reduced the incidence of these problems.

The primary source of aluminum is the diet, with a dietary average intake of 20 mg/day and levels ranging up to 100 mg/day. Aluminum occurs naturally in nearly all foods. It is present in food additives, baking powder, and antacids. Small amounts may also leach into foods from aluminum cookware or utensils. Aluminum commonly occurs in finished drinking water, especially surface water treated with aluminum sulfate (alum). A guidance level of 0.05 mg/1 has been recommended by the American Water Works Association (AWWA) to prevent post-treatment precipitation in the distribution system. The NIRS survey found aluminum in 6 percent of 990 sites sampled. Levels ranged from 0.03 to 1.77 mg/1, with a median level of 0.08 mg/1.

EPA received several comments on the November 1985 proposal regarding aluminum. All of the commenters agreed with EPA's decision not to propose a MCLG for aluminum based on the available information. EPA intends to develop a SMCL to protect against the

occurrence of aluminum precipitation in drinking water.

Sodium: EPA is proposing to remove sodium (ion) from the list of 83 contaminants because drinking water contributes only a small fraction of total dietary intake of sodium, and data indicating an association between sodium in drinking water and hypertension in the general population are inadequate (50 FR 46980). Recent studies indicate that both sodium and chloride, not sodium alone, may be associated with blood pressure effects in some sensitive individuals. Therefore, EPA did not propose an MCLG for sodium in the November 1985 notice.

The diet contributes approximately 90 to 99 percent of daily sodium intake, and drinking water makes up most of the remaining amount. Data on total sodium intake are limited, but one study of excretion over 12- to 24-hour periods reported average excretion of 1,600 to 9,600 mg during the 24-hour time period. Diets prescribed for persons needing to restrict their sodium intake typically allow 250 or 500 mg of sodium per day. The American Heart Association has recommended a guidance level for those persons on sodium-restricted diets of 20 mg/1 for sodium in drinking water. In a 1963 Public Health Service survey, sodium occurred in drinking water at levels ranging from 0.4 to 1900 mg/1; 42 percent of the water containing sodium had levels greater than 20 mg/1. The NIRS survey found measurable sodium in 100 percent of the 990 samples taken; sodium levels ranged from 0.9 to 1540 mg/1, with a median level of 16.6 mg/1.

EPA received several comments on the November 1985 notice regarding regulation of sodium in drinking water. All commenters agreed with EPA's decision not to regulate sodium in drinking water based on the data available.

Dibromomethane: EPA is proposing to remove dibromomethane from the list of 83 contaminants because the available health effects data are not adequate to support a MCLG. No lifetime studies were found in the literature review. EPA reviewed two subchronic studies of dibromomethane toxicity; neither were adequate to support an MCLG. Dibromomethane tested positive in several bacterial mutagenicity assays, but negative in two others. No data on carcinogenicity, or reproductive or developmental toxicity were available for review. Dibromomethane is being considered for nomination to the NTP for carcinogenicity testing.

EPA did not address regulation of dibromomethane in the November 1985 proposal. The Agency is currently developing a Health Advisory for dibromomethane assessing those data that are available. The Agency believes that more data are needed before it can propose a MCLG for dibromomethane.

Dibromomethane was not a target analyte in the GWSS. However, EPA attempted to identify unknown peaks in the GWSS chromatograms. Dibromomethane was not noted among the identified peaks. EPA has analyzed several thousand drinking water samples for dibromomethane from Indiana, Nebraska, Iowa, Kansas, Missouri, and other states in EPA Regions VI and IX. Dibromomethane was not found in any samples; the detection limit was 1 μg/L.

Dibromomethane has been reported in several surveys of drinking water (45 of 377 groundwater samples, maximum = 45 μg/1; and 79 of 282 surface water samples, maximum = 360 μg/1; both in New Jersey). Dibromomethane was also reported in 39 Delaware River and Raritan Canal water samples at levels ranging up to 14 μg/1. However, the validity of these data, vis-a-vis the EPA findings, is questionable, as contamination of laboratories with dibromomethane has been reported. EPA believes it is reasonable to remove dibromomethane from the list of 83 contaminants and to add it to the Drinking Water Priority List so that the data can be verified.

Molybdenum: EPA is proposing to remove molybdenum from the list of 83 contaminants because inadequate health effect data exists upon which to base a MCLG (50 FR 46976). EPA therefore did not propose a MCLG for molybdenum in its November 1985 notice. Molybdenum is an essential element at low doses and toxic at high doses. The National Academy of Sciences (NAS) considers 0.15 to 0.5 mg/day safe for adults, although few data on human health effects are available.

An epidemiology study of molybdenum's effects in humans showed no adverse effects at drinking water concentrations of 0.20 mg/l or less; however, the exposed population consisted of only 13 subjects. The NAS considers current scientific understanding of chronic molybdenum deficiency or toxicity "extremely limited." Molybdenum has been classified in EPA's Group D for carcinogenic potential.

Animal data on molybdenum vary depending on the species and the form of molybdenum tested. At high doses, it can cause damage to the liver, kidneys, and sometimes the adrenals and spleen. However, it is not possible to select a single appropriate animal model for molybdenum because there is considerable variability in its effects on animals.

Molybdenum has been found in a number of drinking water supplies. Three separate studies showed molybdenum levels in drinking water at levels of 1.4 μg/1 (median of 100 cities studied), 85.9 μg/1 (mean of 380 samples), and 8.0 μg/1 as a mean in a 1978 study (EPA, 1985 Draft Criteria Document for Molybdenum). The NIRS survey (1987) found molybdenum in 8% of 990 sample sites, with a maximum level of 181 μg/1, and a median level of 10 μg/1. Dietary intakes range from 1 to 46 μg/day according to the NAS.

EPA received several comments on the November 1985 **Federal Register** notice regarding molybdenum. All of the commenters concurred with EPA's decision not to regulate molybdenum at this time.

Vanadium: EPA is proposing to remove vanadium from the list of 83 contaminants because there are insufficient health effects data upon which to set a MCLG (50 FR 46980).

There is extensive literature on the health effects of vanadium dusts and fumes when inhaled, but these studies are not useful for evaluating the health effects of vanadium in drinking water as its effects are different when given orally than when inhaled. The only oral exposure data available from human studies involved small test groups (5, 12, and 6 subjects in 3 different studies). Gastrointestinal problems, including weight loss, nausea and abdominal pain were reported in several of the subjects under very high dosage conditions.

In the 1987 NIRS survey, 10 percent of 680 sites sampled were positive for vanadium. The maximum level found was 48 ug/1, and the median level was 6 ug/1.

The November 1985 **Federal Register** notice did not propose a MCLG for vanadium. Twelve commenters on the October 5, 1983, ANPRM addressed regulation of vanadium; all twelve commenters believed that establishing an MCL for vanadium was not justified based on available data.

2. Alternate Candidates for Removal

EPA has identified several other candidates for possible removal from the list, and solicits public comment on these alternates. The 26 inorganic and organic contaminants on the list of 83 contaminants for which MCLGs were not proposed in the November 1985 notice are potential alternate candidates for removal (see Appendix B). These contaminants were initially screened out in determining contaminants for which MCLGs should be proposed in the

November 1985 notice. Since November 1985, additional data have become available and EPA is currently developing MCLGs and NPDWRs for many of these contaminants. If it is determined that any one or more of the seven contaminants proposed for removal should instead be regulated at this time, EPA would select an altenate from the group of 26 contaminants for which MCLGs had not been proposed; two of these are presented below for public comment as possible alteranates: sulfate and phthalates.

Sulfate. Sulfate is a divalent anion found in nearly all natural waters. EPA believes that sulfate may warrant regulation based on several reports of adverse health effects. However, the currently available data, while indicating potential transient acute health risks, may not be adequate to form the basis of a MCLG (50 FR 46979).

The known health effects of transient exposure to high levels of sulfate ion are diarrhea and dehydration. Infants appear to be more sensitive to these effects than adults. Several cases of gastroenteritis have been reported in infants consuming formula with sulfate levels of 630 to 1150 mg/l. No chronic adverse effects have been reported in older children in areas of the country with high sulfate levels in the water and no adverse effects have been associated with sulfate exposure over a lifetime. Transient gastric problems can occur at high doses in adults or older children until they become acclimated to sulfate levels that may be present in water. EPA believes these short-term data may not be adequate to support a MCLG in adults and infants. The current SMCL is 250 mg/1 (40 CFR 143.3) based on aesthetic concerns.

In the CWSS, sulfate levels ranged from less than 1 to 770 mg/1, with a median level of 4.6 mg/1. Of the 969 water supplies sampled, 3 percent had levels greater than 250 mg/1. An analysis of interstate carrier water systems produced similar results.

Phthalates. EPA is considering most phthalates as an alternate for removal from the contaminant list because their occurrence at significant levels in drinking water is anticipated to be very rare. However, many have been found in hazardous waste sites.

The phthalate of primary public health concern, di(2-ethylhexyl) phthalate (DEHP) is carcinogenic in rats and mice. There are also data indicating that DEHP can cause liver enlargement and testicular damage in test animals. NTP is currently testing dibutylphthalate, and EPA is reviewing data on several other phthalates.

Data on various phthalates in drinking water show levels up to 30 ug/1, although most are an order of magnitude less than this and some are two orders less. However, virtually all data on DEHP occurrence are suspect, due to widespread laboratory contamination of samples (via plastic tubing containing phthalates).

EPA received several comments on the ANPRM which included phthalates as candidates for regulation. One commenter believed that phthalates do not pose a significant health risk because the commenter could find no ingestion-related health effects. Another commenter believed that while branched phthalates were cause for concern, linear and benzyl phthalates should not be regulated.

3. Substitute Contaminants

Each of the seven drinking water contaminants which EPA is proposing to substitute for the contaminants listed above was already proposed for regulation in the November 1985 notice. There are adequate health effects and occurrence data to demonstrate that these seven contaminants have a greater potential to pose public health risks than the contaminants discussed above. This information is presented in detail in the November 13, 1985, notice (50 FR 46936), and is summarized briefly here. Detailed technical data on these contaminants, including health effects criteria documents are available for each contaminant, and can be found in the docket for the November 1985 proposal.

Aldicarb sulfoxide and aldicarb sulfone: Aldicarb sulfoxide and aldicarb sulfone are the principal transformation products of the pesticide aldicarb, also known as Temik. Aldicarb sulfone is also commercially available as a pesticide. Aldicarb has been found in water supplies in several parts of the country, including Long Island, NY (detectable levels in 29 percent of 8400 wells sampled since 1981), in northern California, southern New Jersey, Florida, Maine, Wisconsin, Virginia, and North Carolina, and in some surface water samples.

The most sensitive adverse health effect of, and the basis for the proposed MCLG for aldicarb, aldicarb sulfoxide, and aldicarb sulfone is cholinesterase inhibition. The sulfoxide form of aldicarb is among the most potent cholinesterase inhibitors known and so the proposed MCLG of 0.009 mg/1 for each contaminant was based on its toxicity (50 FR 46985). Mutagenicity data are incomplete, but those available do not indicate mutagenic potential. Several carcinogenicity bioassays in rats and mice have been negative, and aldicarb and its transformation products have been placed in EPA's Group E for carcinogenic potential.

EPA received several comments regarding regulation of aldicarb sulfoxide and sulfone. One commenter urged development of a different MCLG for aldicarb sulfone, because it believed data on the other forms of aldicarb do not apply to the sulfone, and because there are separate EPA tolerances for aldicarb and aldicarb sulfone under FIFRA. Another commenter believed aldicarb residues should not be regulated because the available test methods are impractical. Another commenter agreed with the NOAEL for aldicarb sulfoxide, but disagreed with the use of 100 as an uncertainty factor, and urged the use of an uncertainty factor between 10 and 40. The same commenter asserted that a safety factor of 10 is appropriate for aldicarb sulfone.

Ethylbenzene: Ethylbenzene has been found in water supplies in several drinking water surveys. In the GWSS, 3 or 466 random samples of drinking water from groundwater and 3 of 479 non-randomly selected samples of drinking water from groundwater were positive for this contaminant. Ethylbenzene has also been found at 111 NPL sites, and in the aquifer under at least one NPL site. Ethylbenzene causes adverse kidney and liver effects in test animals. In the November 1985 proposal, EPA proposed a MCLG of 0.68 mg/1 based on these effects (50 FR 46994). Ethylbenzene does not appear to be mutagenic. It has not been adequately studied for its carcinogenicity potential and is therefore classified in EPA's Group D. NTP is currently testing ethylbenzene for carcinogenicity.

Two individuals or groups commented on the proposed MCLG for ethylbenzene. Both commenters disagreed with establishing a MCLG, one because it believed that ethylbenzene occurred infrequently in water, and the other because it believed that the 20 percent relative source contribution was overconservative and arbitrary.

Heptachlor and heptachlor epoxide: Heptachlor is an insecticide that was widely used for control of termites, ants, soil insects in agriculture, insects found on corn in several midwestern states and a variety of insects found on lawns and ornamental plants, until its cancellation in 1978 for all uses except subsurface control of subterranean termites. Heptachlor rapidly oxidizes to heptachlor epoxide which is more persistent than heptachlor. Heptachlor has been found in a variety of foods including milk, meat, fish, and poultry. It

has also been found in air. Heptachlor has been found in drinking water in several states and in groundwater, soil, and sediments at seven hazardous waste sites listed or proposed for listing on the NPL.

Heptachlor epoxide is the major metabolite of heptachlor, and it is found distributed throughout the tissues of animals exposed to heptachlor, especially in adipose tissue. Heptachlor and heptachlor epoxide at high doses can have a variety of adverse effects, including central nervous system effects in cases of acute intoxication and hepatic effects including microsomal enzyme induction, venous thrombosis, and with long exposure, cirrhosis in mice. Mutagenicity tests are equivocal, with some tests positive and others negative. Heptachlor caused hepatocellular carcinomas in mice but not in rats, and has been categorized in EPA's Group B2 for carcinogenicity potential. EPA proposed MCLG of zero for both heptachlor and heptachlor epoxide based on the carcinogenicity concerns in its November 1985 notice (50 FR 46996).

Three individuals or organizations commented on the proposed MCLGs for heptachlor and heptachlor epoxide. One commenter believed heptachlor should be reclassified as a "possible human carcinogen" (EPA's Group C) because they believed that rodents were an inappropriate animal model, and they questioned some pathology evaluations. Two commenters believed a single MCLG was appropriate for both compounds, since both are carcinogenic.

Styrene: Styrene is used extensively in the manufacture of a wide variety of plastics and resins, including resins used in the treatment of drinking water. Styrene has been detected in drinking water (the NORS survey detected in the water of 3 of 8 cities monitored, at 640–2,200 μg/l), and its wide industrial use and the fact that it has been found at 22 hazardous waste sites listed or proposed for listing on the NPL indicate that it can be anticipated to occur in drinking water.

The acute toxicity of styrene is relatively low. Longer term exposure at high doses causes altered hepatic enzyme activity and biochemical changes in the brain in test animals. The styrene data in humans is conflicting for some effects, but it is known to cause neurologic and behavioral changes, chromosomal aberrations, and skin and respiratory tract irritation. Styrene tested positive in several mutagenicity tests, but negative in one. Carcinogenicity tests have shown increased lung tumors in one strain of mice, and a slight increase in leukemia/lymphosarcoma in female rats, but the overall evaluation of carcinogenicity resulted in classification in EPA's Group C because of problems with interpreting the results of these studies. NTP plans to test styrene for carcinogenicity via the inhalation route starting this summer. EPA proposed an MCLG of 0.14 mg/l based on chronic study data in the November 1985 notice (50 FR 47004).

Seven individuals or groups commented on the styrene MCLG. One commenter agreed with the MCLG. Several others believed an MCLG is inappropriate because occurrence is low, styrene is poorly soluble in water, and the organoleptic threshold is lower than the adverse effect level.

Nitrite: Nitrite directly causes methemoglobinemia in infants. Nitrite interacts with hemoglobin in the blood to form methemoglobin, which unlike hemoglobin, is incapable of carrying adequate oxygen to body tissues. When the proportion of methemoglobin to total hemoglobin increases, anoxia results which can cause death when severe. This condition, methemoglobinemia, occurs primarily in infants.

Nitrite is known to occur in drinking water but few monitoring data are available. Nitrite in drinking water is usually the result of organic contamination, or lack of disinfection and often bacterial contamination.

Nitrate, which is converted to nitrite in the body, is more commonly found than nitrite as it is the more stable environmental form of nitrogen. Nitrate is a naturally occurring form of nitrogen in the environment and is also present in drinking water as a result of the use of fertilizers in agriculture. Nitrate occurs in both surface water and groundwater. Compliance monitoring for nitrate nitrogen in drinking water found levels above 10 mg/l, the current interim MCL, in hundreds (570) of community water supplies (an MCLG of 10.0 mg/l was proposed for nitrate as part of the November 1985 revisions of the NIPDWRs). Nitrate is converted to nitrite in the gastrointestinal tract; nitrite is the proximate cause of infant methemoglobinemia. Because nitrite does occur in drinking water, and is often indicative of reducing conditions, organic or bacterial contamination and lack of disinfectant, and because potential health effects are due to nitrite, EPA proposed an MCLG of 1.0 mg/l for this contaminant in the November 1985 **Federal Register** (50 FR 46972).

Fourteen groups or individuals submitted comments on the proposed standards for nitrate and nitrite. Most of the comments focused on the nitrate MCLG, although four commenters did discuss nitrite. Two of these supported the proposed MCLG for nitrite. Two other commenters argued that there are insufficient occurrence data to justify regulation of nitrite.

4. Public Comment

EPA requests public comment on these proposed substitutions to the list of 83 contaminants scheduled for regulation. The Agency welcomes comments on the need to regulate any of these contaminants. Specifically, EPA solicits comments on the following issues: (1) The criteria used to select candidates for removal from and addition to the list; (2) the proposed candidates for removal and (3) the proposed candidates for addition to the list. EPA also requests commenters to submit to the docket any data on any of the contaminants discussed above which EPA may not already have.

IV. Drinking Water Priority List

A. Methodology for Selecting Contaminants for the Drinking Water Priority List

Although the universe of potential environmental contaminants is quite large, relatively few substances occur in drinking water at levels that pose risks. For example, there are more than 1,000 chemicals and chemical classes considered to be hazardous substances under CERCLA, alone. There are approximately 400 registered active ingredients for some 1,400 pesticides registered under FIFRA. In addition, many naturally occurring substances are potential contaminants of drinking water. Sources of contamination include municipal effluents, landfills, agricultural or other uses of pesticides, industrial effluents, urban/rural runoff, disinfection and other treatment chemicals, paints and coatings, corrosion by-products, septic tanks industrial waste disposal facilities, landfills and natural substances. However, relatively few of these substances have been detected in public water supplies, and even then, mostly at extremely low levels. Hence, EPA believes that, after promulgation of regulations for the 83 contaminants required by the SDWA, most of the significant drinking water contaminants will have been regulated, except for disinfection by-products and certain pesticides.

As described earlier, the Act requires EPA to compile a priority list of contaminants ("Drinking Water Priority List" or "DWPL"). EPA is to publish this list by January 1, 1988 (and a new list every three years thereafter) [Section 1412(b)(3)(A)]. EPA must publish MCLGs

and promulgate NPDWRs for 25 contaminants on the DWPL within three years after publishing it [Section 1412(b)(3)(D)]. To establish the DWPL, the Act specifies that:

- Each contaminant removed from the list of 83 contaminants specified in the SDWA and replaced with another must go on the DWPL [Section 1412(b)(2)(C)].
- The DWPL must contain substances which are known or anticipated to occur in public water systems, and which may require regulation under the Act (e.g., may have any adverse effect on the health of persons) [Section 1412(b)(3)(A)].
- EPA must consider certain lists of substances in compiling the DWPL [Section 1412(b)(3)(B)]. These are: "Hazardous substances," as defined in the CERCLA, Section 101(14), and Pesticides registered under FIFRA.
- The Agency must form an advisory working group including members from the National Toxicology Program and EPA's Offices of Drinking Water, Pesticides, Toxic Substances, Ground Water, Solid Waste and Emergency Response, and any other members the Administrator deems appropriate to assist in developing the DWPL [Section 1412(b)(3)(B)].

EPA's Approach for the Contaminant List

Based on the requirements of the SDWA and the practical difficulties associated with regulating substances within three years of publication of the DWPL, EPA has decided to use the following general criteria to select substances for the first DWPL:

1. The contaminant must occur in public water systems, or its characteristics or use patterns must be such that it has strong potential to occur in public water systems at levels of concern.
2. The contaminant must have a documented or suspected adverse human health effect.
3. There must be sufficient information available on the contaminant (including health effects data, analytical methods, and treatability studies) so that a regulation could likely be developed within the statutory time frames. Substances for which insufficient information to regulate is available will be candidates for subsequent priority lists (to be published triennially, beginning in 1991).

In general, EPA is seeking to select substances for the first DWPL which meet the requirements of the Act and which represent a significant cross-section of the most important or potentially important drinking water contaminants. To achieve that end, EPA is applying the above criteria to the following groups of contaminants to derive the first DWPL:

Group 1: The seven contaminants proposed for removal from the statutory list of 83 contaminants that EPA is to regulate by 1989 (the Act requires EPA to include the contaminants on the DWPL, regardless of the application of the above criteria [Section 1412(b)(2)(C)]);
Group 2: Disinfectants and contaminants formed as a result of the disinfection process ("disinfection by-products");
Group 3: The first 50 contaminants on the priority list that EPA is required to compile under Section 110 of the Superfund Amendments and Reauthorization Act of 1986 (SARA);
Group 4: Design-analytes of the EPA National Pesticides Survey (NPS) and pesticides reported to be present in drinking water in certain federal and state surveys;
Group 5: Unregulated contaminants to be monitored under Section 1445 of the SDWA; and
Group 6: Certain other substances reported frequently and/or at high concentrations in other recent surveys.

The specific rationale for selecting these particular groups of substances as candidates for the DWPL is discussed below.

Group 1: Substitutes From the SDWA List of 83 Contaminants

As described above, EPA is proposing to remove the following seven substances from the statutory list of 83 contaminants EPA is required to regulate by the SDWA:

Zinc	Dibromomethane
Silver	Molybdenum
Aluminum	Vanadium
Sodium	

EPA will include on the first DWPL all contaminants removed from the original list of 83 contaminants, as required by Act.

EPA also identified two additional contaminants which also do not appear to warrant regulation at this time and therefore are also candidates for removal from the statutory list of 83 contaminants EPA is to regulate. These substances are:

Sulfates	Phthalates

If in reviewing comments and studying the matter further, EPA determines that any of these substances should be removed from the list of 83 instead of any one or more of the first seven listed above, these substances will be put on the DWPL instead.

Group 2: Disinfectants and Their By-Products

Chlorination is the most widely used method of disinfecting drinking water in the United States. It is convenient to use, effective in destroying or inactivating pathogens, and continues to disinfect in the distribution system. Chlorination is the standard against which all other disinfection techniques and disinfectants are compared.

The goal of disinfection is the removal and/or inactivation of pathogens that are responsible for waterborne disease. The transmission of enteric diseases such as typhoid, cholera, hepatitis, and shigellosis has been substantially controlled by proper water treatment, principally disinfection. Most outbreaks have been linked to improper water treatment practices, especially inadequate disinfection. However, it is disturbing that these outbreaks have continued into the 1980s, even though chlorination is effective and has been available since the 1920s. Congress has mandated that EPA promulgate regulations requiring disinfection as a treatment technique requirement for all public water systems by 1989 [Section 1412(b)(8)]. EPA plans to combine that regulatory requirement with regulations covering disinfectant levels and levels of their toxic by-products. Therefore, EPA considered placing disinfectants and disinfectant by-products on the first DWPL.

Research in Europe (Rook, 1974) and in the United States (Bellar, *et. al.*, 1974) demonstrates that chlorination of natural waters can result in the formation of trihalomethanes (THMs). The discovery that one of these THMs, chloroform, was carcinogenic in laboratory animals prompted reexamination of the widespread practice of chlorination. Surveys in the United States have demonstrated that the occurrence of THMs in community water supply systems which chlorinate was widespread (NORS, 1975, NOMS, 1975 and 1976). In 1979, EPA promulgated a NIPDWR for THMs, including an MCL of 100 ug/1 as an annual average for total THMs (44 FR 68624). See 40 CFR 141.12. This standard currently applies to community water supplies serving more than 10,000 persons and which disinfect their water.

As interest increased in other disinfection by-products, additional information on their formation was collected by EPA (Rice, 1985). EPA also conducted a multi-city investigative survey of community water supplies (Stevens *et al.*, 1986) and an intensive survey of several water supplies for a

subset of the by-products (Reding et al., 1986). Based on the Rice report and on these surveys, EPA has developed a list of disinfectants and disinfection by-products that are candidates for regulation (see Table 1). EPA is currently conducting research on health effects, analytical chemistry, and treatability for most of these compounds.

Table 1—Disinfectants and Disinfection By-Products

A. Disinfectants

Chlorine
Hypochlorite ion
Chlorine dioxide
Chlorite
Chlorate
Chloramine
Ammonia
Ozone

B. Trihalomethanes

Chloroform
Bromoform
Bromodichloromethane
Dibromochloromethane
Dichloroiodomethane

C. Halonitriles

Bromochloroacetonitrile
Dichloroacetonitrile
Dibromoacetonitrile

D. Halogenated Acids, Alcohols, Aldehydes, and Ketones

Monochloroacetic acid
Dichloroacetic acid
Trichloroacetic acid
Chloralhydrate
2,4-dichlorophenol

E. Others

Chloropicrin
Cyanogen chloride
3-chloro-4-(dichloromethyl)-5-hydroxy-2(5H)-furanone (MX)

EPA selected the contaminants on Table 1, which includes both disinfectants and their by-products, based on a number of factors. The disinfectants selected are the major ones available and, in the case of chlorine, in widespread use. Ozone is also available, but it usually does not exist in solution long enough to reach the consumer, and, to date, its byproducts (alcohols, ketones, aldehydes) are not known to be toxic. Some of the chlorinated by-products listed can be measured with analytical methods currently available to water utilities, but others present significant analytical difficulties. While the actual list of identified and unidentified chlorinated by-products may be greater than five hundred, EPA believes that the selected contaminants are a useful working list that is representative of human exposure and possible health concerns. Furthermore, EPA believes that the contaminants can likely be controlled, and that their control will also limit exposure to related by-products. Many of these contaminants also occur frequently in drinking water and generally are found at higher concentrations than those not listed in Table 1. In summary, the major factors for selection were frequency of use of the disinfectant (with chlorine being highest) frequency and magnitude of actual or predicted occurrence in public water systems, possibility of adverse human health effects, and the ability of water utilities to monitor and control the contaminant and other by-products at the same time.

EPA may regulate the contaminants on this list either by promulgating treatment technique requirements, setting MCLs, or a combination of both. As mentioned earlier, it is likely that such regulation would occur in conjunction with development of the mandatory disinfection requirement of Section 1412(b)(8) of the SDWA. In this way, EPA can balance the benefits of reduced risk of disease from exposure to microorganisms with the increased risk of exposure to the disinfectant chemicals and their by-products.

As stated above, EPA currently regulates four of the principal trihalomethane disinfectant by-products under one regulation (40 CFR 141.12). EPA may regulate other disinfection by-products in the same fashion, because reduction of certain by-products or classes of by-products often results in the reduction of other by-products as well. In addition, the analyses of samples for these substances can often be performed together. Therefore, for listing on the DWPL, EPA has consolidated the by-products in Table 1 into contaminant-groups or contaminant-classes, which are listed in Table 2. EPA will determine which contaminants, including THMs, require individual regulations and which may be grouped, as in the current THM regulation. Listing by groups will allow EPA to regulate some or all of the contaminants listed in Table 1, as well as any other members of these groups. Because of the significance of exposure to the intentionally added disinfectants themselves, they are listed separately in Table 2.

Table 2, below, lists the individual disinfectants and the groups of disinfection by-products that EPA intends to include on the first DWPL.

Table 2—Disinfectants and Disinfectant By-Products Considered for the DWPL

Chlorine
Hypochlorite ion
Chlorine dioxide
Chlorite
Chlorate
Chloramine
Ammonia
Ozone
Trihalomethanes
Halonitriles
Halogenated acids, alcohols, aldehydes, and ketones
Others: chloropicrin, cyanogen chloride, MX

Group 3: SARA Priority List

The Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99-499 ("SARA")], amended CERCLA [42 U.S.C. 9601 *et seq.*]. SARA requires the Agency for Toxic Substances and Disease Registry (ATSDR) of the Department of Health and Human Services and EPA to prepare a priority-ordered list of hazardous substances covered by CERCLA which are most commonly found at hazardous waste sites on the CERCLA NPL, and which the agencies determine pose the most significant potential threat to human health. The two agencies must base their determination of the potential human health threat posed by these substances on their known or suspected toxicity to humans and the potential for human exposure to such substances. The first list of 100 substances was published in the **Federal Register** on April 17, 1987 (52 FR 12866).

ATSDR and EPA used three criteria for determining the degree to which each substance poses a potential human health risk: (1) Chemical toxicity; (2) frequency of occurrence of chemicals at NPL sites or certain other facilities; and (3) potential for human exposure to the substances (Final Support Document for the SARA List, U.S.E.P.A., 1987).

To evaluate these criteria, EPA and ATSDR used: (1) Modified Reportable Quantity (RQ) designations; (2) site-percent occurrence data; and (3) exposure considerations to prepare a "Hazardous Substances Ranking Matrix." RQs are minimum reporting amounts; an environmental release of a substance that exceeds that substance's RQ must be reported (see Section 102 of CERCLA). Site-percent occurrence data reflect the relative frequency of occurrenced at NPL sites of the 126 Priority Pollutants (listed in Section 307(a) of the Clean Water Act), plus the compiled frequencies of findings of the next 10 largest instrumental signals

found during the same chemical analyses. The Hazardous Substances Rating Matrix was generated by intersecting the 717 CERCLA hazardous substances for which there existed an RQ based on either acute toxicity, chronic toxicity or potential carcinogenicity with the list of NPL substances for which there were site-percent occurrence data. An algorithm reflecting these criteria was employed to develop a risk index for each of these substances and chemicals were ranked based on the resulting risk index. In addition, ATSDR and EPA grouped some of the substances into chemical classes.

The list of 100 substances ranked as described above was separated into four priority groups of 25 substances each. ATSDR and EPA listed the substances within each group in order of their Chemical Abstracts Services (CAS) Registry numbers, to reflect the somewhat inexact nature of the ranking algorithm and the uncertainties in the underlying data bases. The first group of 25 is the highest priority group, the second is the next highest priority, and so on. For a complete discussion of the basis and development of the SARA Section 110 priority list, see 52 FR 12866 and the background document to the SARA Section 110 list.

RQ values have been promulgated for most CERCLA Section (101)(14) substances, so most of the substances were considered in developing the SARA Section 110 priority list. Accordingly, EPA believes that using the SARA Section 110 list in the development of the first DWPL fulfills the SDWA requirement to consider CERCLA Section 101(14) substances. In addition, the basic analyte list for the laboratory program which generated the site-percent data was the 12th Priority Pollutant list compiled under Section 307(a) of the Clean Water Act. EPA has reviewed the findings from Agency-sponsored data gathering projects at specific surface water supplies. The surface water data indicate that nearly all substances that were found at concentrations greater than one part per billion have already been considered by EPA in the development of the DWPL. Therefore, EPA believes that, by using the SARA Section 110 list as described in this section, the Agency has considered the key substances that are likely to be of concern in public water systems both from waste disposal and from other releases to surface and ground waters.

EPA has decided to consider, for the DWPL, the two highest priority groupings of chemicals under SARA. As a group, these fifty priority substances present the most significant concerns at Superfund sites and, hence, may pose significant risks of exposure via drinking water supply. Furthermore, these two groups also include all substances on the SARA list with an RQ value of less than 10 pounds (the more toxic the substance, the lower the RQ number).

EPA has deleted from the list of fifty high priority SARA substances all substances which are included in the statutory list of 83 contaminants which EPA is to regulate under the SDWA. The remaining substances appear in Table 3. EPA will consider substances from the second group of fifty on the SARA Section 110 list for listing on the next DWPL, which the Agency must publish by January 1, 1991. Because use of the SARA Section 110 list necessarily excludes consideration of certain additional CERCLA Section 101(14) substances, i.e., those for which there is no RQ. EPA intends to evaluate these remaining substances, as well as all other substances on various lists established by the Agency pursuant to environmental legislation, in the course of developing subsequent DWPLs.

Table 3—Substance on the SARA 110 Priority List (From the First Two Priority Subgroups) Not Otherwise Required To be Regulated by the SDWA

Dieldrin/Aldrin
Chloroform
Heptachlor/Heptachlor epoxide
N-nitrosodiphenylamine
N-nitrosodimethylamine
4,4'-DDE,DDT,DDD
Chloroethane
Bromodichloromethane
Isophorone
1,1,2,2-Tetrachloroethane
3,3'-Dichlorobenezidine
Benzidine
Phenol
Bis(2-chloroethyl)ether
2,4-Dinitrotoluene
Bis(chloromethyl)ether
N-nitrosodi-n-propylamine

Group 4: Pesticides Registered under FIFRA

The National Pesticides Survey (NPS) is a joint venture of the Office of Drinking Water and the Office of Pesticide Programs. The purpose of this survey and the criteria used to select analytes for the NPS makes these analytes logical candidates for inclusion on the DWPL from the universe of pesticides regulated by EPA.

EPA selected the design-analytes for the NPS from pesticide chemicals which are either known to have occurred in groundwater as a result of agricultural uses, have certain characteristics such as high water solubility, or are members of potential problem classes of chemicals such as triazines, substituted ureas, carbamates, substituted acetanilides, and aromatic acids. Also, EPA included nematocides because, in general, they are mobile, persistent, and are applied directly to the soil. EPA will also analyze for other pesticides that are quantifiable under an analytical method already being employed for a design analyte.

EPA reduced this intial list of candidate analytes by screening the pesticides for physical-chemical properties and other characteristics that would cause them to be suspected groundwater pollutants. These characteristics include the following:

—More than 1,000,000 pounds used in 1982 (1982 was the most recent year for which consistent data were available)
—High water solubility
—Persistence in the field demonstrated by hydrolysis half-life and photolysis half-life
—Low soil-water adsorption partition coefficient

These same physical characteristics might cause a pesticide to become a potential surface water contaminant.

In the final step in the design-analyte selection process, EPA evaluated the pesticides according to a pesticide root-zone modeling scheme called LEACH (Leaching Evaluation of Agricultural Chemicals; a Handbook). LEACH is a compilation of monographs which estimates the percent of applied pesticides, wich varying environmental fate properties, that could leach below the root zone in various environments.

Pesticides on the resulting list were described as either high, medium, or low priority, based on toxicological effects. EPA considered these designations in determining whetehr certain pesticides should be dropped from consideration due to serious problems with the chemical analyses required for the survey. For more detailed information about the criteria used to select design-analytes for the NPS, see U.S.E.P.A. Kotas, 1987 (a group of memos describing the selection).

In conclusion, the design-analyte pesticides EPA chose for the NPS either have already been found in drinking water or are the most likely to be found in groundwater or surface water. While this ranking scheme, unlike the SARA 110 list, did not explicitly consider toxicity, EPA is assuming, for purposes of developing this DWPL, that all of the listed pesticides are of sufficient toxicity to be considered for listing as priority

drinking water contaminants. The NPS design-analytes appear in Table 4, except for substances which are already on the statutory list of 83 contaminants which the SDWA requires EPA to regulate or which are otherwise covered in this notice.

EPA has identified two other pesticides as possible groundwater contaminants since it compiled the NPS design-analyte list: 1,3-dichloropropene (based on monitoring results and physical-chemical properties), and prometryn (an *s*-triazine with appropriate physical-chemical properties). These pesticides are also included in Table 4.

Table 4—NPS Design-Analytes List, With Substances Already Scheduled for Regulation, or Otherwise Covered in This Notice, Deleted

Acifluorfen
Ametryn
Baygon
Bentazon
Bromacil
Butylate
Carbaryl
Carboxin
Carboxin sulfoxide
Chloramben
Chlorothalonil
Cyanazine
Cycloate
DCPA
DCPA acid metabolites
Diazanon
Dicamba
1,3-Dichloropropene
3,5-Dichlorobenzoic acid
Diphenamid
Disulfoton and sulfone
Diuron
ETU
Fenamiphos sulfone
Fenamiphos sulfoxide
Fluormeturon
Hexazinone
Hexachlorobenzene
Hydroxydicamba
Methomyl
Methyl paraoxon
Metolachlor
Metribuzin
Metribuzin DA, DADK, DK
Prometon
Prometryn
Pronamide
Pronamide metabolite
Propachlor
Propazine
Propham
Tebuthiuron
Terbacil
Trifluralin
2,4,5-T

GROUP 5: Monitoring Contaminants

Section 1445 of the Safe Drinking Water Act directs EPA to require public drinking water systems to "conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist him in establishing regulations under this title, . . . in evaluating the health risks of unregulated contaminants, or in advising the public of such risks." [Section 1445(a)(1)]. Section 1445 requires EPA to publish a list of unregulated contaminants (contaminants for which there is no national primary drinking water regulation specifying an MCL or treatment technique requirement). EPA proposed monitoring requirements for 50 unregulated volatile organic contaminants (VOCs) in the November 1985 notice (50 FR 46902). Elsewhere in today's **Federal Register**, EPA is promulgating those requirements. The contaminants for monitoring were generally proposed based on their capability to be detected by the packed column methodology specified in the November 1985 notice. Packed column methodolgy problems exist for substances with higher molecular weights, however, so for these substances, capillary methods were developed.

In developing the monitoring requirements for these 50 unregulated VOCs, EPA evaluated the likelihood of widespread occurrence, the cost impact on public water systems, the availability of reliable analytical methods, the availability of laboratories to perform these analyses, and the experience of EPA and several States in conducting monitoring surveys.

EPA surveys (GWSS and U.S. EPA, Region V, Harrison, J.F.) have found that the occurrence of VOCs in public water systems supplied by groundwater sources is relatively widespread. Up to 20 percent of systems appear to be contaminated by one or more VOCs. These surveys show a useful correlation between the positive detection of a VOC and system size, proximity to industrial areas, and/or proximity to waste disposal facilities. This widespread occurrence and reasonable correlation between positive findings and proximity to sources of contamination suggest that the occurrence of VOCs is a good indicator for the potential occurrence of other industrial organics.

The State of California conducted extensive monitoring of public water supplies served by groundwater sources pursuant to State Law 1803. The report of this study concludes that, of the 36 VOCs, 81 extractables, 42 pesticides and three pesticide degradation products specifically analyzed for, 33 contaminants were found in drinking water. These included 31 VOCs (two of which are agricultural chemicals, i.e., dibromochloropropane and 1,2-dichloropropane) and two nonvolatile pesticides (atrazine and simazine). In all, 2,947 wells from 807 public water supplies were tested. Nineteen percent of the wells had a positive finding, generally at low concentrations. Ninety-four percent of the positives were VOCs. The results of this survey tend to confirm that VOCs are among the most likely contaminants and that their ocurrence may be used as indicators of potential contamination by other, non-pesticidal, organics. The VOCs are quite soluble, in general, and tend not to bind to soils. These characteristics increase the likelihood that a VOC will infiltrate through soil and contaminate groundwater sources, in contrast to the chemical properties of many other organics that tend to restrict their mobility in soil and ground water.

Elsewhere in today's **Federal Register**, EPA is promulgating monitoring regulations which separate the VOCs into three categories as follows:

Category 1: Compounds which can be readily analyzed. Monitoring required for all systems.

Category 2: Compounds which require some specialized handling during analysis. Monitoring required only for systems vulnerable to contamination by these compounds.

Category 3: Compounds which do not elute within reasonable retention time using packed column methods or are difficult to analyze because of high volatility or instability. The State decides which systems would have to analyze for these contaminants.

EPA considered including, on the first DWPL, the unregulated contaminants listed in Categories 1 and 2 (35 VOCs, above). These are the substances for which all systems (in the case of Category 1, or many systems, in the case of Category 2) will be monitoring in the next five years. It is likely that States will not require many systems to monitor for Category 3 VOCs unless they are particularly vulnerable, so EPA is not including them in the first DWPL. EPA believes, on the basis of the substantial occurrence data discussed above, that compliance data on the regulated VOCs and monitoring data for the VOCs in the two categories of unregulated VOCs will not only indentify any of the VOCs that appear in drinking water, but also provide a useful surrogate for industrial

contamination of groundwater in general.

Some of the 35 contaminants in these 2 categories are already included in the statutory list of 83 contaminants EPA is to regulate under the SDWA. EPA is considering the remaining contaminants for inclusion on the DWPL. They are listed in Table 5.

Table 5—Monitoring Contaminants Proposed for Inclusion on the First DWPL

Chloroform
Bromodichloromethane
Bromoform
1,1,1,2-Tetrachloroethane
Ethylbenzene
1,3-Dichloropropane
Bromobenzene
Chloromethane
Styrene
Bromomethane
1,2,3-Trichloropropane
1,1,2,2-Tetrachloroethane
Chloroethane
2,2-Dichloropropane
o-Chlorotoluene
p-Chlorotoluene
1,1-Dichloropropene
1,1-Dichloroethane

Group 6: Substances Reported Frequently and/or at High Concentrations in Recent Surveys or From Other Sources

The National Inorganics and Radionuclides Survey (NIRS) is a project of the EPA Office of Drinking Water. This recently completed survey indicated relatively widespread occurrence at high concentrations of strontium and boron in public water supplies (NIRS, 1987). While EPA believes that these substances are not likely to pose a significant health threat to consumers of public water, EPA proposes to include these two substances on the first DWPL because the Agency plans to evaluate the need for MCLGs and NPDWRs for these contaminants.

Cryptosporidium is a protozoan which has recently been identified as a waterborne disease agent. In 1984, it was implicated in an outbreak in Texas, in which 117 cases of gastroenteritis was reported. The community in question was supplied by groundwater, and treatment was identified as being deficient (CDC, 1985). Another reported waterborne disease outbreak occurred in January 1987 in Carrollton, Georgia. Over 20,000 cases were reported.

This organism typically causes gastroenteritis between two days and several weeks after infecting the host. Preliminary data from the University of Washington suggests that the infective dose for suckling mice is considerably lower for *Cryptosporidium* than for *Giardia* (another protozoan causing gastroenteritis that has a low infective dose). Water samples collected in reservoirs in Arizona are yielding ten times the number of *Cryptosporidium* oocysts than *Giardia* cysts. The *Cryptosporidium* oocyst is about 4–5 microns in diameter, somewhat smaller than the *Giardia* cyst (Foyer and Unger, 1986).

Some experts feel that filtration technology used to control *Giardia* may also be effective for control of *Cryptosporidium*, though this has not been demonstrated. In addition, while this organism's sensitivity to conventional disinfection is not yet known, the protozoan survives for 18 months in a 2.5 percent solution of potassium dichromate. EPA expects that the filtration and disinfection requirements for surface water that EPA will propose shortly will provide significant protection from the organism. EPA is proposing to include *Cryptosporidium* on the first DWPL and to investigate whether additional regulatory controls are necessary.

B. Specific Substances Considered for the Drinking Water Priority List

1. Exposure Potential and/or Physical-Chemical Properties

EPA believes that there is little or no potential for exposure through drinking water to certain compounds described above as candidates for the DWPL for the following reasons:

- Following the cancellation for virtually all uses in 1975, the pesticides aldrin/dieldrin have not been produced in the U.S. in over ten years. The pesticides, while persistent, are extremely hydrophobic and are unlikely to become significant water supply problems.
- Virtually all uses of DDT, DDE, and DDD were cancelled in 1972, and these pesticides have not been produced in the U.S. since 1981. The pesticides are tightly bound to soils and sediments and unlikely to become significant water supply problems.
- Benzidine and 3,3'-Dichlorobenzidine have limited environmental releases, can bind to organic matter in waters and degrades readily.
- Bis(chloromethyl)ether is not stable in water.
- Bis(chloroethyl)ether is volatile, hydrolyzes slowly in water, and has very limited releases.
- Naphthalene has only limited releases, can bind tightly to soil and sediments, and is biodegradable.
- Acrolein rapidly hydrolyzes in water.
- Aniline has only limited releases and biodegrades readily.
- Phenol is considered to be non-toxic at levels which can occur in drinking water.
- N-nitrosodimethylamine and N-nitrosodi-n-propylamine have limited releases and are probably biodegradable.

Based on this information, EPA is not proposing to include these compounds on the first DWPL.

2. Data Availability

EPA is not considering the contaminants listed in Table 6 for the January, 1988, DWPL, because sufficient data to regulate them is not expected to be available to the Agency in time to meet the statutory deadlines for regulating contaminants on this list (January 1, 1991):

TABLE 6.—SUBSTANCES WITH SIGNIFICANT DATA GAPS

Substance	Data Gaps*		
	TECH	HLTH	ANAL
N-nitrosodiphenyl amine	X	X	
N-nitrosodimethyl amine	X	X	
Isophorone	X		
3,3'-dichlorobenzidine	X	X	
N-nitrosodi-n-propyl amine	X	X	
Acifluorfen	X		
Ametryn	X		
Baygon	X		
Bentazon	X		
Bromacil	X		
Butylate	X		
Carbaryl	X		
Carboxin	X		
Carboxin sulfoxide	X	X	
Chloramben	X		
Chlorothalonil	X		
Cyanazine	X		
Cycloate	X		
DCPA	X	X	
DCPA acid metabolites	X	X	
Diazanon	X		
Dicamba	X		
1,3-Dichloropropene	X		
3,5-Dichlorobenzoic acid	X	X	
Diphenamid	X		
Disulfoton and sulfone	X		
Ethylenethiourea	X		
Fenamphos sulfone and sulfoxide	X		
Fluormeturon	X		
Hexazinone	X		
Hexachlorobenzene	X		
Hydroxydicamba	X	X	
Methomyl	X		
Methyl paraoxon	X		
Metolachlor	X		
Metribuzin	X		
Metribuzin DA, DADK, DK	X		
Prometon	X		
Prometryn	X		
Pronamide	X	X	
Pronamide metabolite	X	X	
Propachlor	X		
Propazine	X		
Propham	X		
Tebuthiuron	X		
Terbacil	X		
Trifluralin	X		
MX	X		X
Chlorate			X
Cyanogen chloride			X

*TECH = lack of sufficient treatment or treatability data or cost information to promulgate a regulation.

HLTH=lack of sufficient toxicological and/or exposure information to establish an MCLG or NPDWR.
ANAL=lack of an accepted, validated analytical method for measuring concentrations expected in drinking water.

There are significant data gaps for most of the candidate pesticides. For countervailing reasons, the Agency has decided that it should include a subset of these pesticides on the DWPL, regardless of current data availability considerations. EPA will develop data for and will include isophorone, ETU, and 1,3-dichloropropene on the DWPL for the following reasons:

- Isophorone: This pesticide appears on the SARA § 110 list and, hence, is of concern from multiple significant sources of environmental contamination.
- Ethylene thiourea (ETU): This pesticide is a metabolite of many of the nematocides and is often the only environmental indication of contamination of those substances. Inclusion of ETU is essentially inclusion of these nematocides.
- 1,3-Dichloropropene: This pesticide has physical properties which indicate that is quite likely to leach into groundwater. In addition, this substance has been detected in drinking water.

EPA will consider for placement on future lists substances which it does not include on the first DWPL because of data limitations. If EPA determines that any of these substances, or any other substances, pose a potential risk to public health, the Agency may regulate those substances on a schedule outside the statutory requirement to regulate *at least* 25 substances on the DWPL every three years.

3. DWPL

Table 7 is the list of contaminants EPA is considering including on the first DWPL to be published on January 1, 1988. This draft DWPL is a compilation of substances from the six groups as discussed in Section IV.A. of this notice. EPA has attempted to remove duplicate contaminants, contaminants proposed for substitution onto the list of 83 contaminants, and contaminants that are inappropriate for regulation based on exposure considerations, health risks and/or physical-chemical properties, or lack of data. EPA is asking for comment on additional adjustments to the DWPL based on those considerations.

4. Future DWPLs

EPA's decision to consider the six groups of substances described in Section IV.A. above, applies principally to the development of the first DWPL, scheduled for publication by January 1, 1988. EPA will consider substances in categories not included in this DWPL in developing subsequent DWPLs. Other substances to be considered for future lists will include but are not limited to those listed pursuant to SDWA Section 1428 (wellhead protection), other CERCLA Section 101(14) substances and other extremely hazardous substances.

Table 7—Draft Priority List of Drinking Water Contaminants

Zinc
Silver
Sodium
Aluminum
Molybdenum
Vanadium
Dibromomethane
Chlorine
Hypochlorite ion
Chlorine dioxide
Chlorite
Chloramine
Ammonia
Ozone
Trihalomethanes*
Halonitriles*
Halogenated acids, alcohols, aldehydes, and ketones*
Chloropicrin
2,4-Dinitrotoluene
1,3-Dichloropropane
Bromobenzene
Chloromethane
Bromomethane
Chloroethane
1,1-Dichloroethane
1,2,3-Trichloropropane
1,1,1,2-Tetrachloroethane
1,1,2,2-Tetrachloroethane
2,2-Dichloropropane
o-Chlorotoluene
p-Chlorotoluene
1,1-Dichloropropene
1,3-Dichloropropene
2,4,5–T
Isophorone
Ethylene thiourea
Boron
Strontium
Cryptosporidium

V. Public Comments

EPA requests comments and information on all aspects of this notice. Specifically, EPA is interested in responses to the following questions:

1. Are the criteria for identifying contaminants for removal from or substitution on the list of 83 contaminants appropriate?
2. Are additional, relevant data available for the contaminants EPA is proposing to remove from the list of 83 contaminants?
3. Are the specific contaminants EPA is proposing to remove from the list of 83 contaminants appropriate? Are there additional substances among the 83 that would be candidates for removal? Are the proposed substitutions appropriate?
4. Are the criteria EPA is using to develop the Drinking Water Priority List appropriate?
5. Has EPA considered all appropriate lists or groups of chemicals in compiling the Drinking Water Priority List?
6. Are there additional contaminants that EPA should add to the Drinking Water Priority List? Should any of the DWPL candidates be deleted? What data support their addition to the list (e.g., health effects data, occurrence data or on information anticipated occurrence in drinking water)? Is there a reasonable expectation that treatability date, analytical methods, and data quantifying toxicological effects necessary to include these additional contaminants will be available in time to meet the regulatory schedule in the Act?

Written comments should be sent to the address at the beginning of this notice. EPA will consider all comments it receives on or before the date indicated at the beginning of this notice in making substitutions on the list of 83 contaminants and in developing the final priority list.

VI. References

No separate docket for the removal and substitution portion of this notice will be established. EPA discussed in its November 1985 proposal (50 FR 46936) all of the contaminants (except dibromomethane) proposed for removal from and substitution on the list of 83 contaminants. Data on these contaminants are in the public docket for that rulemaking located at EPA Headquarters, at the address listed at the beginning of this notice. These data include references on the occurrence in drinking water, analytical methods, and health effects for the seven contaminants proposed for substitution on the list of 83 contaminants. The technical support documents prepared by EPA are included in these references. Data on the seven contaminants proposed for removal from the list are also in the public docket. EPA is currently preparing technical assessment documents for these contaminants. These include health effects Criteria Documents or Health Advisories for each of the seven contaminants. Individuals should contact Ms. Colleen Campbell (202–382–3027) for access to the public dockets. Materials in the public docket include the following:

- National Academy of Sciences, "Drinking Water and Health," Volumes I

* See Table 1.

(1977), II (1980), III (1980), IV (1982) and V (1983).

• 51 FR 46294 (September 24, 1986), EPA's Final Guidelines for Carcinogen Risk Assessment.

References for the DWPL portion of this notice are included in the public docket for this notice. This docket is located at EPA Headquarters, at the address listed at the beginning of this notice. Individuals should contact Ms. Colleen Campbell (202–382–3027) for access to the public docket. Materials in the DWPL docket are as follows:

• Centers for Disease Control, "Water-Related Outbreaks Annual Summary, 1984," issued November, 1985.

• Foyer, R. and Unger, B., 1986, "*Cryptosporidium* spp. and Cryptosporidiosis," Microbiological Reviews 50:458–483.

• Rook, J.J., "Formation of Haloforms During Chlorination of Natural Water," *Water Treatment and Examination*, 23, 234–243 (Part 2, 1974).

• Bellar, T.A., Lichtenberg, J.J., and Kroner, R.C., "The Occurrence of Organohalides in Chlorinated Drinking Water," *Journal of the American Water Works Association*, 66, 703–706 (December 1974).

• Rice, R.G., "Identification and Toxicology of Oxidation Products Produced During Treatment of Drinking Water," Rip Rice Inc. (1986).

• Stevens, A.A., Moore, L.A., Slocum, C.J., Seeger, D.R., and Smith, B.C., "Byproducts of Chlorination at Ten Operating Utilities" (EPA internal report), U.S.E.P.A., Drinking Water Research Division, Cincinnati, OH (March 31, 1986).

• Reding, R., Fair, P.S., Shipp, C.J., and Brass, H.J., "Measurement of Dihaloacetonitriles, and Chloropicrin in Drinking Water," U.S.E.P.A., Office of Drinking Water, Cincinnati, OH (January 1986).

• U.S.E.P.A. Region V, Harrison, J.F., "Region V Synthetic Organic Chemical (VOC) Contamination at Public Water Supplies" (Quarterly Reports), Third Quarterly Report, August 1986; and "States and EPA Test Drinking Water Wells to Detect and Resolve Organic Chemical Contamination in Midwest," *EPA Environmental News Release* (May 28, 1986).

• U.S.E.P.A., "Final Support Document," (Criteria for SARA § 110 Toxicity Profile List) (March 24, 1987).

• U.S.E.P.A., "Analyte Selection File for the NPS," Kotos, J., 1987.

• U.S.E.P.A., "NIRS Inorganic Data," Westrick to Vogt (May 13 and May 15, 1987).

NORS, NOMS, NSP, CWSS, RWS, and GWSS documentation and draft Criteria Documents can be found in the dockets for EPA's June 1984 proposal (49 FR 24330), November 1985 proposal (50 FR 46936) and November 1985 rule (50 FR 46880).

VII. Other Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This notice is not a regulation and will not have a major financial or economic impact on any party. Therefore, EPA has not prepared an Economic Impact Analysis (EIA). EPA will prepare an EIA, if appropriate, at the time of regulation of any contaminant substituted on the list of 83 contaminants or the DWPL.

The Office of Management and Budget (OMB) reviewed this notice.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires EPA to explicitly consider the effect of proposed regulations on small entities. This notice does not constitute a proposed rulemaking activity. Therefore, the Regulatory Flexibility Act requires no such analysis. As EPA prepares regulations for contaminants under Section 1412 of the SDWA, substances substituted on the list of 83 contaminants or selected from the Drinking Water Priority List, EPA will consider the effect of the proposed regulations on small entities.

C. Paperwork Reduction Act

There are no information collection requirements in this notice (44 U.S.C. 3501 et seq.).

Dated: June 19, 1987.

Lee M. Thomas,

Administrator.

Appendix A

Contaminants Required to be Regulated by the SDWA Amendments of 1986

Volatile Organic Chemicals

Trichloroethylene	Chlorobenzene
Tetrachloroethylene	Dichlorobenzene
Carbon tetrachloride	Trichlorobenzene
1,1,1-Trichloroethane	1,1-Dichloroethylene
1,2-Dichloroethane	trans-1,2-Dichloroethylene
Vinyl chloride	cis-1,2-Dichloroethylene
Methylene chloride	
Benzene	

Microbiology and Turbidity

Total coliforms	Viruses
Turbidity	Standard plate count
Giardia lamblia	*Legionella*

Inorganics

Arsenic	Molybdenum
Barium	Asbestos
Cadmium	Sulfate
Chromium	Copper
Lead	Vanadium
Mercury	Sodium
Nitrate	Nickel
Selenium	Zinc
Silver	Thallium
Fluoride	Beryllium
Aluminum	Cyanide
Antimony	

Organics

Endrin	Vydate
Lindane	Simazine
Methoxchlor	PAHs
Toxaphene	PCBs
2,4–D	Atrazine
2,4,5–TP	Phthalates
Aldicarb	Acrylamide
Chlordane	Dibromochloropropane (DBCP)
Dalapon	1,2-Dichloropropane
Diquat	Pentachlorophenol
Endothall	Picloram
Glyphosate	Dinsoeb
Carbofuran	Ethylene dibromide (EDB)
Alachlor	Dibromomethane
Epichlorohydrin	Xylene
Toluene	Hexachlorocyclopentadiene
Adipates	
2,3,7,8–TCDD (Dioxin)	
1,1,2-Trichloroethane	

Radionuclides

Radium 226 and 228	Gross alpha particle activity
Beta particle and photon radioactivity	Radon
Uranium	

Appendix B

Contaminants on the list of 83 for which MCLGs were not proposed as of November 13, 1985.[1]

Methylene chloride	Thallium
Antimony	Beryllium
Endrin	Cayanide
Dalapon	1,1,2-Trichloroethane
Diquat	Vydate
Endothall	Simazine
Glyphosate	PAHs
Adipates	Atrazine
2,3,7,8–TCDD (Dioxin)	Phthalate
Trichlorobenzene	Pichloram
Standard plate count	Dinoseb
Legionella	Hexachlorocyclopentadiene
Sulfate	
Nickel	

[FR Doc. 87–14943 Filed 7–7–87; 8:45 am]

BILLING CODE 6560–50–M

[1] Note.—MCLGs have also not been proposed for the seven contaminants EPA is proposing to delete from the list of 83 contaminants. These seven are zinc, silver, aluminum, sodium, dibromomethane, molybdenum, and vanadium.

Federal Register

Wednesday
July 8, 1987

Part IV

Veterans Administration

38 CFR Part 21

Veterans Education; All Volunteer Force Educational Assistance Program; Proposed Regulations

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; All Volunteer Force Educational Assistance Program

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: These proposed regulations are designed to implement those provisions of the Veterans' Educational Assistance Act of 1984 which established a new educational assistance program for veterans and servicemembers, and the provisions of the Department of Defense Authorization Act, 1986 which affect that program. This new program is designed to replace VEAP (Post-Vietnam Era Veterans' Educational Assistance Program) for those who enter the Armed Forces after June 30, 1985, and before July 1, 1988. These regulations implement this new program. These regulations do not implement those provisions of the Veterans' Benefits Improvement and Health Care Authorization Act of 1986 which affect this program. The VA intends to amend the appropriate regulations and incorporate the amendments at a later date.

DATES: Comments must be received on or before August 4, 1987. It is proposed that, in accordance with Pub. L. 99-145, the proposed § 21.7044 (a) and (c) be made effective November 8, 1985. In accordance with Pub. Law 98-525, it is proposed that the remaining regulations be made effective October 19, 1984.

All written comments received will be available for review until August 18, 1987.

ADDRESSES: Send written comments to: Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until August 18, 1987.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, (202) 389-2092.

SUPPLEMENTARY INFORMATION: The proposed regulations show how the VA (Veterans Administration) will administer the all volunteer force educational assistance program.

In some respects this program will be administered differently from other education programs which the VA administers. For example, there is no work study or tutorial assistance for veterans. There are no advance payments. No apportionments of benefits are permitted.

Some types of courses which are permitted under other educational programs administered by the VA are not permitted in this new program. Correspondence courses, combination correspondence-residence courses, except for those courses leading to a standard college degree, and flight training courses except those which lead to standard college degree are not permitted. The law does not permit beneficiaries to train in farm cooperative courses or cooperative courses.

The VA finds that good cause exists for making § 21.7044(a) and (c), like the section of the law they implement, retroactively effective on November 8, 1985. There is also good cause for making the remainder of these regulations, like the sections of the law they implement, retroactively effective on October 19, 1984. To achieve the maximum benefit of this legislation for the affected individuals, it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to it.

The VA has determined that these proposed regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. Although it is possible that in future years this program will have a $100 million annual effect on the economy, the effect will be caused by the underlying law, not the regulations themselves. These regulations will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs has certified that the proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b) these proposed regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made even though some small entities will have to make the reports required in the proposed §§ 21.7152, 21.7154 and 21.7156. The records needed to make the reports are maintained by educational institutions in the normal course of business. Hence, the regulations will not impose any additional recordkeeping costs on the small entities.

Some costs will result from making the reports. However, the reports themselves are required by law either in 38 U.S.C. 1784(a) or 38 U.S.C. 1434(b). While the law allows some leeway in setting the frequency of these reports, in those instances where the VA has chosen a frequency greater than that required by law, the agency does not believe the economic impact of the regulations to be significant. Furthermore, part of the cost of making these reports is offset by the reporting fee which the law requires the VA to make to educational institutions.

The regulations will have no economic impact on other small entities such as small governmental units.

The information collection requirements contained in §§ 21.7152, 21.7154 and 21.7156 of these proposed regulations have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on the information collection requirements should be submitted to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Veterans Administration, 726 Jackson Place, NW., Washington, DC 20503 (202) 395-7316.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.125.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 8, 1986.

Thomas K. Turnage,

Administrator.

Editorial Note: This document was received for publication by the Office of the Federal Register on June 30, 1987.

38 CFR Part 21, Vocational Rehabilitation and Education, is amended by adding a new Subpart J, containing §§ 21.7000 through 21.7310 to read as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart J—All Volunteer Force Educational Assistance Program (New G.I. Bill)

Sec.

Authority: 38 U.S.C. chapter 30, Pub. L. 98–525; 38 U.S.C. 210(c))

Subpart J—All Volunteer Force Educational Assistance Program (New GI Bill)

§ 21.7000 Establishment of educational assistance program.

(a) *Establishment.* An educational assistance program for certain veterans and servicemembers is established. (38 U.S.C. 1401(1); Pub. L. 98–525)

(b) *Purpose.* The purposes of the program are:

(1) To assist in the readjustment of members of the Armed Forces to civilian life after their separation from military service;

(2) To promote and assist the All Volunteer Force program and the Total Force Concept of the Armed Forces by establishing a new program of educational assistance based upon service on active duty or a combination of service on active duty and in the Selected Reserve (including the National Guard) to aid in the recruitment and retention of highly qualified personnel for both the active and reserve components of the Armed Forces;

(3) To give special emphasis to providing educational assistance benefits to aid in the retention of personnel in the Armed Forces.

(38 U.S.C. 1401; Pub. L. 98–525)

Definitions

§ 21.7020 Definitions.

For the purposes of regulations from § 21.7000 through § 21.7499 and the payment of basic educational assistance and supplemental educational assistance under 38 U.S.C. ch. 30, the following definitions apply.

(a) *Definitions of participants*—(1) *Servicemember.* The term "servicemember" means anyone who:

(i) Meets the eligibility requirements of § 21.7042 or § 21.7044, and

(ii) Is on active duty with the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service or National Oceanographic and Atmospheric Administration.

(38 U.S.C. 1416; Pub. L. 98–525)

(2) *Veteran.* The term "veteran" means anyone who—

(i) Meets the eligibility requirements of § 21.7042 or § 21.7044, and

(ii) Is not on active duty. The term "veteran" includes an individual who is actively participating in the Selected Reserve.

(38 U.S.C. 1411, 1412; Pub. L. 98–525)

(b) *Other definitions*—(1) *Active duty.* (i) The term "active duty" means—

(A) Full-time duty in the Armed Forces, other than active duty for training.

(B) Full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service,

(C) Full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration, and

(D) Authorized travel to or from such duty or service.

(ii) The term "active duty" does not include any period during which an individual:

(A) Was assigned full time by the Armed Forces to a civilian instruction for a course of education which was substantially the same as established courses offered to civilians,

(B) Served as a cadet or midshipman at one of the service academies, or

(C) Served under the provisions of 10 U.S.C. 511(d) pursuant to an enlistment in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve.

(38 U.S.C. 101(21), 1402(6); Pub. L. 98–525)

(2) *Attendance.* The term "attendance" means the presence of a veteran or servicemember

(i) In the class where the approved course is being taught in which he or she is enrolled, or

(ii) Any other place of instruction, training or study designated by the educational institution where the veteran or servicemember is enrolled and is pursuing a program of education.

(38 U.S.C. 1434, 1780(g); Pub. L. 98–525)

(3) *Audited course.* The term "audited course" has the same meaning as provided in § 21.4200(i).

(38 U.S.C. 1434, 1780(a); Pub. L. 98-525)

(4) *Basic educational assistance.* The term "basic educational assistance" means a monetary benefit payable to all individuals who meet basic requirements for eligibility under ch. 30, title 38, United States Code, for pursuit of a program of education. (38 U.S.C. 1402(1); Pub. L. 98-525)

(5) *Break in service.* The term "break in service" means a period of more than 90 days between the date when an individual is released from active duty or otherwise receives a complete separation from active duty service and the date he or she reenters on active duty. (38 U.S.C. 1421; Pub. L. 98-525)

(6) *Continuous active duty.* (i) The term "continuous active duty" means active duty served without interruption. A complete separation from active duty service will interrupt the continuity of active duty service.

(ii) Time lost while on active duty will not interrupt the continuity of service. See § 3.15.

(38 U.S.C. 1411, 1412; Pub. L. 98-525)

(7) *Cost of course.* The term "cost of course" means the total cost for tuition and fees for a course which an educational institution charges to nonveterans whose circumstances are similar to veterans enrolled in the same course. "Cost of course" does not include the cost of supplies which the student is required to purchase at his or her own expense. (38 U.S.C. 1432; Pub. L. 98-525)

(8) *Deficiency course.* The term "deficiency course" means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a post-secondary program of education. (38 U.S.C. 1434; Pub. L. 98-525)

(9) *Dependent.* The term "dependent" means—

(i) A spouse as defined in § 3.50(c) of this chapter,

(ii) A child who meets the requirements of § 3.57 of this chapter, or

(iii) A parent who meets the requirements of § 3.59 of this chapter.

(38 U.S.C. 1415(d); Pub. L. 98-525)

(10) *Divisions of the school year.* The term "divisions of the school year" has the same meaning as provided in § 21.4200(b). (38 U.S.C. 1434, 1780(a); Pub. L. 98-525)

(11) *Drop-add period.* The term "drop-add period" has the same meaning as provided in § 21.4200(l). (38 U.S.C. 1434, 1780(a); Pub. L. 98-525)

(12) *Educational assistance.* The term "educational assistance" means basic educational assistance, supplemental educational assistance, and all additional amounts payable, commonly called "kickers."

(38 U.S.C. 1402; Pub. L. 98-525)

(13) *Educational objective.* An educational objective is one that leads to the awarding of a diploma, degree or certificate which reflects educational attainment. (38 U.S.C. 1402(3), 1652(b); Pub. L. 98-525)

(14) *Enrollment.* The term "enrollment" has the same meaning as provided in § 21.4200(n). (38 U.S.C. 1434, 1780(g); Pub. L. 98-525)

(15) *Enrollment period.* The term "enrollment period" has the same meaning as provided § 21.4200(p). (38 U.S.C. 1434, 1780(g); Pub. L. 98-525)

(16) *Holiday vacation.* The term "holiday vacation" means a customary, reasonable vacation period connected with a Federal or State legal holiday which is identified as a holiday vacation in the educational institution's approved literature. Generally, the VA will interpret a reasonable period as not more than one calendar week at Christmas and one calendar week at New Year's and shorter periods of time in connection with other legal holidays. (38 U.S.C. 1434, 1780; Pub. L. 98-525) (Oct. 19, 1984)

(17) *In residence on a standard quarter- or semester-hour basis.* The term "in residence on a standard quarter- or semester-hour basis" has the same meaning as provided in § 21.4200(r). (38 U.S.C. 1434, 1788(c); Pub. L. 98-525)

(18) *Institution of higher learning.* The term "institution of higher learning" has the same meaning as provided in § 21.4200(h). (38 U.S.C. 1434, 1788; Pub. L. 98-525)

(19) *Mitigating circumstances.* The term "mitigating circumstances" means circumstances beyond the veteran's or servicemember's control which prevent him or her from continuously pursuing a program of education. The following circumstances are representative of those which the VA considers to be mitigating. This list is not all-inclusive.

(i) An illness of the veteran or servicemember,

(ii) An illness or death in the veteran's or servicemember's family,

(iii) An unavoidable change in the veteran's conditions of employment,

(iv) An unavoidable geographical transfer resulting from the veteran's employment,

(v) Immediate family or financial obligations beyond the control of the veteran which require him or her to suspend pursuit of the program of education to obtain employment,

(vi) Discontinuance of the course by the educational institution,

(vii) Unanticipated active duty military service, including active duty for training.

(38 U.S.C. 1434, 1780(a); Pub. L. 98-525)

(20) *Nonpunitive grade.* The term "nonpunitive grade" has the same meaning as provided in § 21.4200(j). (38 U.S.C. 1434, 1780(a); Pub. L. 98-525)

(21) *Normal commuting distance.* The term "normal commuting distance" has the same meaning as provided in § 21.4200(m). (38 U.S.C. 1434, 1780; Pub. L. 98-525)

(22) *Professional or vocational objective.* A professional or vocational objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program consists of a series of courses not leading to an educational objective, these courses must be directed toward attainment of a designated professional or vocational objective. (38 U.S.C. 1402(3); Pub. L. 98-525)

(23) *Program of education.* A program of education—

(i) Is any unit course or subject or combination of courses or subjects pursued by a veteran or servicemember at an educational institution, required by the Administrator of the Small Business Administration as a condition to obtaining financial assistance under the provisions of 15 U.S.C. 636; or

(ii) Is a combination of subjects or unit courses pursued at an educational institution. The combination generally is accepted as necessary to meet requirements for a predetermined educational, professional or vocational objective. It may consist of subjects or courses which fulfill requirements for more than one objective if all objectives pursued are generally recognized as being related to a single career field. (38 U.S.C. 1402(3), 1652(b); Pub. L. 98-525)

(24) *Punitive grade.* The term "punitive grade" has the same meaning as provided in § 21.4200(k). (38 U.S.C. 1434, 1780(a); Pub. L. 98-525)

(25) *Pursuit.* (i) The term "pursuit" means to work, while enrolled, toward the objective of a program of education. This work must be in accordance with approved institutional policy and regulations, and applicable criteria of title 38, United States Code; must be necessary to reach the program's objective; and must be accomplished through—

(A) Resident courses (including teacher training courses and similar

courses which the VA considered to be resident training),

(B) Independent study courses,

(C) A graduate program of research in absentia, or

(D) Medical-dental internships and residencies, nursing courses and other medical-dental specialty courses.

(ii) The VA will consider a veteran who qualifies for payment during an interval between terms or school closing, or who qualifies for payment during a holiday vacation to be in pursuit of a program of education during the interval, school closing, or holiday vacation.

(38 U.S.C. 1434, 1780(g); Pub. L. 98-525)

(26) *Refresher course.* The term "refresher course" means a course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed.

(38 U.S.C. 1434; Pub. L. 98-525)

(27) *Remedial course.* The term "remedial course" means a course designed to overcome a deficiency at the elementary or secondary level in a particular area of study, or a handicap, such as in speech. (38 U.S.C. 1434, 38 U.S.C. 1691(a)(2); Pub. L. 98-525)

(28) *Secretary.* The term "Secretary" means the Secretary of Defense with respect to members of the Armed Forces under the jurisdiction of the Secretary of a military department, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy. (38 U.S.C. 1402(5); Pub. L. 98-525)

(29) *School, educational institution, institution.* The terms "school, educational institution, and institution" mean any vocational school, business school, junior college, teacher's college, college, normal school, professional school, university, or scientific or technical institution. They also mean any public or private elementary school or secondary school which offers courses for adults, provided that the courses lead to an objective other than an elementary school diploma, a high school diploma or their equivalents. (38 U.S.C. 1434, 1652; Pub. L. 98-525)

(30) *School year.* The term "school year" means generally a period of 2 semesters or 3 quarters which is not less than 30 nor more than 39 weeks in total length. (38 U.S.C. 1434; Pub. L. 98-525)

(31) *Selected Reserve.* The term "Selected Reserve" means the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces, as required to be maintained under section 268(b), 10 U.S. Code. (38 U.S.C. 1402(4); Pub. L. 98-525)

(32) *Standard class session.* The term "standard class session" has the same meaning as provided in § 21.4200(g). (38 U.S.C. 1434, 1788(c); Pub. L. 98-525)

(33) *Standard college degree.* The term "standard college degree" has the same meaning as provided in § 21.4200(e). (38 U.S.C. 1434, 1788; Pub. L. 98-525)

(34) *Supplemental educational assistance.* The term "supplemental educational assistance" means a benefit payable to a veteran or servicemember as a supplement to his or her basic educational assistance for pursuit of a program of education under 38 U.S.C. ch. 30. (38 U.S.C. 1402(2); Pub. L. 98-525)

Claims and Applications

§ 21.7030 Applications, claims and informal claims.

(a) *Applications.* (1) An individual must file all claims for educational assistance with the VA. The claims must be in the form prescribed by the Administrator.

(2) An individual on active duty must consult with his or her service education officer before applying for educational assistance.

(38 U.S.C. 1434(a), 1671; Pub. L. 98-525)

(b) *Informal claim.* The VA will consider any communication from an individual, an authorized representative or a Member of Congress to be an informal claim if it indicates an intent to apply for educational assistance. Upon receipt of an informal claim, if a formal claim has not been filed, the VA will provide an application form to the claimant. If the VA receives the application form within one year from the date the VA provided it, the VA will consider the claim to have been filed on the date the VA received the informal claim. (38 U.S.C. 1434(a), 1671; Pub. L. 98-525)

(c) *Enrollment is not an informal claim.* The act of enrolling in an approved school does not in itself constitute an informal claim.

(38 U.S.C. 1434(a), 1671; Pub. L. 98-525)

§ 21.7032 Time limits.

(a) *Scope of this section.* The provisions of this section are applicable to original applications, formal or informal, and to reopened claims. (38 U.S.C. 1434(a), 1671; Pub. L. 98-525)

(b) *Abandoned claim.* The VA will consider a claim to be abandoned when the VA requests evidence in connection with the claim, and the claimant does not furnish the evidence within one year of the date of the request. After the expiration of one year, the VA will not take further action unless a new claim is received. (38 U.S.C. 3003(a))

(c) *New claim.* When a claim has been abandoned, the VA will consider any subsequent communication which meets the requirements of an informal claim to be a new claim. The VA will consider the date of receipt of the subsequent communication to be the date of the new claim. (38 U.S.C. 1434(a), 1671; Pub. L. 98-525)

(d) *Failure to furnish form or notice of time limit.* Failure by the VA to furnish the veteran or servicemember any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of claim or for the completion of any action required will not extend the periods allowed for these actions. (38 U.S.C. 1434(a), 1671; Pub. L. 98-525)

(e) *Time limit for filing a claim for an extended period of eligibility.* A claim for an extended period of eligibility as described in § 21.7051 must be received by the VA by the later of the following dates:

(1) One year from the date on which the veteran's original period of eligibility ended.

(2) One year from the date on which the physical or mental disability ceased to prevent the veteran from beginning or resuming his or her chosen program of education.

(38 U.S.C. 1431(d); Pub. L. 98-525)

Eligibility

§ 21.7040 Eligibility for basic educational assistance.

Eligibility for basic educational assistance can be established by—

(a) Some individuals who first become members of the Armed Forces or who first enter on active duty as a member of the Armed Forces during the period beginning on July 1, 1985, and ending on June 30, 1988, and

(b) Some individuals who are eligible for educational assistance allowance under 38 U.S.C. ch. 34.

(38 U.S.C. 1411, 1412; Pub. L. 98-525)

§ 21.7042 Basic eligibility requirements.

An individual must meet the requirements of this section or § 21.7044 in order to be eligible for basic educational assistance. In determining whether an individual has met the service requirements of this section, the VA will exclude any period during which the individual is not entitled to credit for service for the periods of time specified in § 3.15.

(a) *Eligibility based solely on active duty.* An individual may establish eligibility for basic educational

assistance based on service on active duty under the following terms, conditions and requirements.

(1) The individual must during the period beginning on July 1, 1985, and ending on June 30, 1988, either—

(i) First become a member of the Armed Forces, or

(ii) First enter on active duty as a member of the Armed Forces;

(2) Except as provided in paragraph (a)(5) of this section the individual must

(i) Serve at least three years of continuous active duty in the Armed Forces, or

(ii) In the case of an individual whose initial period of active duty is less than three years, serve at least two years of continuous active duty in the Armed Forces;

(3) The individual must receive a secondary school diploma (or an equivalency certificate) before completing the service requirements of this paragraph; and

(4) After completing the service requirements of this paragraph the individual must—

(i) Continue on active duty, or

(ii) Be discharged from service with an honorable discharge, or

(iii) Be placed on the retired list, or

(iv) Be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or

(v) Be placed on the temporary disability retired list, or

(vi) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(5) An individual who does not meet the requirements of paragraph (a)(2) of this section is eligible for basic educational assistance when he or she is discharged or released from active duty—

(i) For a service-connected disability, or

(ii) Under 10 U.S.C. 1173 (hardship discharge), or

(iii) For convenience of the government—

(A) After completing at least 20 months of active duty if his or her initial obligated period of active duty is less than three years, or

(B) After completing 30 months of active duty if his or her initial obligated period of active duty is at least three years.

(38 U.S.C. 1411; Pub. L. 98–525)

(b) *Eligibility based on active duty service and service in the Selected Reserve.* An individual may establish eligibility for basic educational assistance based on a combination of service on active duty and service in the Selected Reserve under the following terms, conditions and requirements.

(1) The individual must, during the period beginning on July 1, 1985, and ending on June 30, 1988, either—

(i) First become a member of the Armed Forces, or

(ii) First enter on active duty as a member of the Armed Forces;

(2) The individual must receive a secondary school diploma (or an equivalency certificate) before completing the service requirements of this paragraph;

(3) The individual must serve at least two years of continuous active duty in the Armed Forces characterized by the Secretary concerned as honorable service.

(4) Except as provided in paragraph (b)(6) of this section, after completion of active duty service the individual must serve at least four continuous years service in the Selected Reserve, during which the individual must satisfactorily participate in training as prescribed by the Secretary concerned.

(5) The individual must, after completion of all service described in this paragraph—

(i) Be discharged from service with an honorable discharge, or

(ii) Be placed on the retired list, or

(iii) Be transferred to the Standby Reserve or an element of the Ready Reserve other than the Selected Reserve after service in the Selected Reserve characterized by the Secretary concerned as honorable service, or

(iv) Continue on active duty, or

(v) Continue in the Selected Reserve.

(6) An individual is exempt from serving four years in the Selected Reserve as provided in paragraph (b)(4) of this section when—

(i) After completion of the active duty service required by this paragraph the individual serves a continuous period of service in the Selected Reserve and is discharged or released from service in the Selected Reserve

(A) For a service-connected disability, or

(B) Under 10 U.S.C. 1173 (hardship discharge); or

(ii) After completion of the active duty service required by this paragraph the individual

(A) Serves at least three and one-half years continuous service in the Selected Reserve, and

(B) Is discharged for convenience of the government.

(7) For purposes of determining continuity of Selected Reserve service, the Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though he or she—

(i) Is unable to locate a unit of the Selected Reserve of the individual's Armed Force that the individual is eligible to join or that has a vacancy, or

(ii) Is not attached to a unit of the Selected Reserve for any reason prescribed by the Secretary concerned by regulation other than those stated in paragraph (b)(7)(i) of this section.

(8) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Department of Defense or the Department of Transportation under regulations described in paragraph (b)(7) of this section shall be binding upon the VA.

(38 U.S.C. 1411, 1412, Pub. L. 98–525)

(c) *Dual eligibility.* An individual who has established eligibility under paragraph (a) of this section through serving at least two years of continuous active duty of an initial obligated period of active duty of less than three years, as provided in paragraph (a)(2) of this section, may attempt to establish eligibility under paragraph (b) of this section through service in the Selected Reserve. If this veteran fails to establish eligibility under paragraph (b) of this section, he or she will retain eligibility established under paragraph (a) of this section. (38 U.S.C. 1411, 1412; Pub. 98–525)

(d) *Eligibility requirements for people on active duty.* (1) An individual on active duty who does not have sufficient active duty service to establish eligibility under paragraph (a) of this section, nevertheless is eligible to receive basic educational assistance when he or she—

(i) During the period beginning on July 1, 1985, and ending on June 30, 1988 either—

(A) First becomes a member of the Armed Forces, or

(B) First enters on active duty as a member of the Armed Forces;

(ii) Receives a secondary school diploma (or an equivalency certificate) before beginning training;

(iii) Serves at least two years of continuous active duty in the Armed Forces; and

(iv) Remains on active duty.

(2) The VA will consider an individual to have met the requirements of paragraph (b) this section, when he or she

(i) Has met the active duty requirements of paragraph (b) this section,

(ii) Is committeed to serve four years in the Selected Reserve, and

(iii) Has obtained a high school diploma (or equivalency certificate) before beginning the training for which he or she wishes to receive educational assistance.

(3) An individual who establishes basic eligibility under this paragraph shall lose that eligibility if, upon discharge or release from active duty, he or she is unable to establish eligibility under any of the other paragraphs of this section. The effective date for that loss of eligibility is the date the veteran was discharged or released from active duty.

(38 U.S.C. 1411, 1412, 1416; Pub. L. 98-525)

(e) *Restrictions on establishing eligibility.* Notwithstanding any other provision of this section, an individual described in either paragraph (e) (1) or (2) of this section is not eligible for basic educational assistance.

(1) An individual who, during the period beginning on July 1, 1985, and ending on June 30, 1988, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces, may elect not to receive educational assistance under 38 U.S.C. ch. 30. This election must be made at the time the individual initially enters on active duty as a member of the Armed Forces. An individual who makes such an election is not eligible for educational assistance under 38 U.S.C. ch. 30.

(2) An individual is not eligible for educational assistance under 38 U.S.C. ch. 30, after December 31, 1976, he or she receives a commission as an officer in the Armed Forces upon—

(i) Graduation from—

(A) The United States Military Academy, or

(B) The United States Naval Academy, or

(C) The United States Air Force Academy, or

(D) The Coast Guard Academy; or

(ii) Completion of a program of educational assistance under 10 U.S.C. 2107 (the Reserve Officers Training Corps Scholarship Program).

(38 U.S.C. 1411, 1412; Pub. L. 98-525)

(f) *Reduction in basic pay.* (1) The basic pay of any individual described in paragraph (a), (b) or (c) of this section shall be reduced by $100 for each of the first 12 months that the individual is entitled to basic pay. If the individual does not serve 12 months, it shall be reduced by $100 for each month that the individual is entitled to basic pay.

(2) The basic pay of any individual who makes the election described in paragraph (d)(1) of this section will not be subject to the reduction described in paragraph (f)(1) of this section.

(3) If through administrative error or other reason the basic pay of an individual described in paragraph (a), (b) or (c) of this section is not reduced as provided in paragraph (f)(1) of this section, the failure to make the reduction will have no effect on his or her eligibility.

(38 U.S.C. 1411, 1412; Pub. L. 98-525)

§ 21.7044 Persons with 38 U.S.C. ch. 34 eligibility.

Certain individuals with 38 U.S.C. ch. 34 eligibility may establish eligibility for educational assistance under 38 U.S.C. ch. 30. In determining whether an individual has met the service requirements of this section, the VA will exclude any period during which the individual is not entitled to credit for service for periods of time specified in § 3.15.

(a) *Eligibility based solely on active duty.* An individual may establish eligibility for basic educational assistance based on service on active duty under the following terms, conditions and requirements—

(1) The individual must have met the requirements of § 21.1040 establishing eligibility for educational assistance allowance under 38 U.S.C. ch. 34;

(2) As of December 31, 1989, the individual must have entitlement remaining for educational assistance allowance under 38 U.S.C. ch. 34;

(3) The individual must receive a secondary school diploma (or an equivalency certificate) before completing the service requirements of this paragraph;

(4) After June 30, 1985—

(i) The individual must serve at least three years continuous active duty in the Armed Forces, or

(ii) Be discharged or released from active duty—

(A) For a service-connected disability,

(B) Under 10 U.S.C. 1173 (hardship discharge), or

(C) For the convenience of the government provided the individual completes at least 30 months of active duty;

(5) Upon completion of the requisite active duty service the individual must either—

(i) Remain on active duty, or

(ii) Be discharged from service with an honorable discharge, or

(iii) Be placed on the retired list, or

(iv) Be transferred to the Fleet Reserve of Fleet Marine Corps Reserve, or

(v) Be placed on the temporary disability retired list, or

(vi) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(38 U.S.C. 1411; Pub. L. 98-525, Pub. L. 99-145)

(b) *Eligibility based on combined active duty service and service in the Selected Reserve.* An individual may establish eligibility for basic educational assistance based on a combination of service on active duty and service in the Selected Reserve under the following terms, conditions, and requirements.

(1) The individual must have met the requirements of § 21.1040 establishing eligibility for educational assistance allowance under 38 U.S.C. ch. 34;

(2) As of December 31, 1989, the individual must have entitlement remaining for educational assistance allowance under 38 U.S.C. ch. 34;

(3) The individual must receive a secondary school diploma (or an equivalency certificate) before completing the service requirements of this paragraph;

(4) After June 30, 1985, the individual must—

(i) Serve at least two years of continuous active duty in the Armed Forces characterized by the Secretary concerned as honorable service, and

(ii) Except as provided in paragraph (b)(6) of this section, after completion of this active duty service, the individual must serve at least four continuous years service in the Selected Reserve, during which the individual must participate satisfactorily in training as prescribed by the Secretary concerned.

(5) The individual also must—

(i) Be discharged from service with an honorable discharge, or

(ii) Be placed on the retired list, or

(iii) Be transferred to the Standby Reserve or an element of the Ready Reserve other than the Selected Reserve after service in the Selected Reserve characterized by the Secretary concerned as honorable service, or

(iv) Continue on active duty, or

(v) Continue in the Selected Reserve.

(6) An individual is exempt from serving four years in the Selected Reserve as provided in paragraph (b)(4) of this section when after completion of the active duty service required by this paragraph he or she—

(i) Serves a continuous period of service in the Selected Reserve, and

(A) Is discharged for a service-connected disability, or

(B) Is discharged under 10 U.S.C. 1173 (hardship discharge); or

(ii) After having served at least three and one-half years continuous service in the Selected Reserve, is discharged for convenience of the government.

(7) For veterans who wish to pursue a program of education before completing four years service in the Selected Reserve, the VA will consider that the four-year requirement is met if the veteran has made a commitment (as determined by the Secretary concerned) to serve four continuous years in the Selected Reserve.

(8) For the purpose of determining continuity of Selected Reserve service, the Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though he or she—

(i) Is unable to locate a unit of the Selected Reserve of the individual's Armed Force that the individual is eligible to join or that has a vacancy, or

(ii) Is not attached to a unit of the Selected Reserve for any reason prescribed by the Secretary concerned by regulation other than those stated in paragraph (b)(8)(i) of this section.

(9) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Department of Defense or the Department of Transportation under regulations described in paragraph (b) (7) or (8) of this section shall be binding upon the VA.

(38 U.S.C. 1411, 1412, 1416; Pub. L. 98–525)

(c) *Eligibility requirements for people on active duty.* (1) An individual on active duty who does not have sufficient active duty service after June 30, 1985, to establish eligibility under paragraph (a) of this section, nevertheless is eligible to receive basic educational assistance when he or she—

(i) During the period beginning on July 1, 1985, and ending on June 30, 1988 either—

(A) First becomes a member of the Armed Forces, or

(B) First enters on active duty as a member of the Armed Forces;

(ii) Receives a secondary school diploma (or an equivalency certificate) before beginning training;

(iii) Serves at least two years of continuous active duty in the Armed Forces; and

(iv) Remains on active duty.

(2) The VA will consider an individual to have met the requirements of this section, when he or she—

(i) Has met the active duty requirements of paragraph (b) of this section,

(ii) Is committed to serve four years in the Selected Reserve, and

(iii) Has obtained a high school diploma (or equivalency certificate) before beginning the training for which he or she wishes to receive educational assistance.

(3) An individual who establishes basic eligibility under this paragraph shall lose that eligibility if, upon discharge or release from active duty, he or she is unable to establish eligibility under any of the other paragraphs of this section. The effective date for that loss of eligibility is the date the veteran was discharged or released from active duty.

(38 U.S.C. 1411, 1412, 1416; Pub. L. 98–525, Pub. L. 99–145)

(d) *Restrictions on establishing eligibility.* Notwithstanding any other provision of this section an individual is not eligible for educational assistance under 38 U.S.C. ch. 30 if he or she after December 31, 1976, receives a commission as an officer in the Armed Forces—

(1) Upon graduation from—

(A) The United States Military Academy, or

(B) The United States Naval Academy, or

(C) The United States Air Force Academy, or

(D) The Coast Guard Academy; or

(2) Upon completion of a program of educational assistance under 10 U.S.C. 2107 (the Reserve Officers Training Corps Scholarship Program).

(38 U.S.C. 1411, 1412; Pub. L. 98–525)

§ 21.7046 Eligibility for supplemental educational assistance.

The Secretary concerned, pursuant to regulations prescribed by that Secretary, has the discretion to provide for the payment of supplemental educational assistance to certain veterans and servicemembers eligible for basic educational assistance.

(a) *Service requirements: eligibility based only on active duty service.* The Secretary concerned may authorize supplemental educational assistance to an individual who is eligible for basic educational assistance under § 21.7042 or § 21.7044 based solely on active duty service only if the individual meets the provisions of this paragraph.

(1) An individual may establish eligibility for supplemental educational assistance by serving five or more consecutive years of active duty in the Armed Forces in addition to the years counted to qualify the individual for basic educational assistance without a break in any such service.

(2) After completion of the service described in paragraph (a)(1) of this section the individual must either—

(i) Continue on active duty without a break,

(ii) Be discharged from service with an honorable discharge,

(iii) Be placed on the retired list,

(iv) Be transferred to the Fleet Reserve or the Fleet Marine Corps Reserve,

(v) Be placed on the temporary disability retired list, or

(vi) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(38 U.S.C. 1421(a); Pub. L. 98–525)

(b) *Service requirements: eligibility based on service in the Selected Reserve.* The Secretary concerned (pursuant to regulations which he or she may prescribe) has the discretion to authorize supplemental educational assistance to an individual who is eligible for basic educational assistance under § 21.7042 or § 21.7044 through consideration of additional active duty service and additional service in the Selected Reserve only if the individual meets the provisions of this paragraph.

(1) The individual must serve—

(i) Two or more consecutive years of active duty in the Armed Forces in addition to the years on active duty counted to qualify the individual for basic educational assistance, and

(ii) Four or more consecutive years of duty in the Selected Reserve in addition to the years of duty in the Selected Reserve counted to qualify the individual for basic educational assistance.

(2) The individual after completion of the service described in paragraph (b)(1) of this section must—

(i) Be discharged from service with an honorable discharge, or

(ii) Be placed on the retired list, or

(iii) Be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or

(iv) Be placed on the temporary disability retired list, or

(v) Continue on active duty, or

(vi) Continue in the Selected Reserve.

(3) The Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though he or she is unable to locate a unit of the Selected Reserve of the individual's Armed Force that the

individual is eligible to join or that has a vacancy.

(4) The Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though he or she is not attached to a unit of the Selected Reserve for any reason (also to be prescribed by the Secretary concerned by regulation) other than those stated in paragraph (b)(3) of this section.

(5) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Department of Defense or the Department of Transportation under regulations described in paragraph (b)(3) or (4) of this section shall be binding upon the VA.

(38 U.S.C. 1421: Pub. L. 98-525)

§ 21.7050 Ending dates of eligibility.

The ending date of eligibility will be determined as follows:

(a) *Ten-year time limitation.* Except as provided in § 21.7051 the VA will not provide basic educational assistance or supplemental educational assistance to a veteran or servicemember after the later of the following:

(1) Ten years from the date of the veteran's last discharge or release from active duty, or

(2) Ten years from the last day on which the individual becomes entitled to educational assistance.

(38 U.S.C. 1431(a); Pub. L. 98-525)

(b) *Correction of military records.* A veteran may become eligible for educational assistance as the result of a correction of military records under 10 U.S.C. 1552, or change, correction or modification of a discharge or dismissal under 10 U.S.C. 1553, or other corrective action by competent military authority. When this occurs, the VA will not provide educational assistance later than 10 years from the date his or her dismissal or discharge was changed, corrected or modified (except as provided in § 21.7051). (38 U.S.C. 1431(b); Pub. L. 98-525)

(c) *Periods excluded.* The VA will not include in computing the 10-year period of eligibility for educational assistance under this section, any period during which the veteran after his or her last discharge or release from active duty–

(1) Was captured and held as a prisoner of war by a foreign government or power, or

(2) Immediately following the veteran's release from this detention during which he or she was hospitalized at a military, civilian or VA medical facility.

(38 U.S.C. 1431(c); Pub. L. 98-525)

§ 21.7051 Extended period of eligibility.

(a) *Period of eligibility may be extended.* The VA shall grant an extension of the applicable delimiting period, as otherwise determined by § 21.7050 provided:

(1) The veteran applies for an extension within the time specified in § 21.7032(e).

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable eligibility period because of a physical or mental disability that did not result from the veteran's willful misconduct. It must be clearly established by medical evidence that such a program of education was medically infeasible. The VA will not consider a veteran who is disabled for a period of 30 days or less as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the veteran was prevented from enrolling or reenrolling in the chosen program or was forced to discontinue attendance, because of the short disability.

(38 U.S.C. 1431(d); Pub. L. 98-525)

(b) *Commencing date.* The veteran shall elect the commencing date of an extended period of eligibility. The date chosen—

(1) Must be on or after the original date of expiration of eligibility as determined by § 21.7050, and

(2) Must either be—

(i) On or before the 90th day following the date on which the veteran's application for an extension was approved by the VA, if the veteran is training during the extended period of eligibility in a course not organized on a term, quarter or semester basis, or

(ii) On or before the commencing date of the first ordinary term, quarter or semester following the 90th day after the veteran's application for an extension was approved by the VA, if the veteran is training during the extended period of eligibility in a course organized on a term, quarter or semester basis.

(38 U.S.C. 1431(d); Pub. L. 98-525)

(c) *Length of extended periods of eligibility.* A veteran's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This shall be determined as follows:

(1) If the veteran is in training in a course organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original eligibility period that his or her training became medically infeasible to the earliest of the following date.

(i) The commencing date of the ordinary term, quarter or semester following the day the veteran's training became medically infeasible,

(ii) The last date of the veteran's delimiting date as determined by § 21.7050, or

(iii) The date the veteran resumed training.

(2) If the veteran is training in a course not organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earlier of the following dates:

(i) The date the veteran's training became medically feasible, or

(ii) The veteran's delimiting date as determined by § 21.7050.

(38 U.S.C. 1431(d): Pub. L. 98-525)

Entitlement

§ 21.7070 Entitlement.

An eligible servicemember or veteran is entitled to a monthly benefit for periods of time during which he or she is enrolled in, and satisfactorily pursuing, an approved program of education. (38 U.S.C. 1414; Pub. L. 98-525)

§ 21.7072 Entitlement to basic educational assistance.

(a) *Most individuals are entitled to 36 months of assistance.* Except as provided in paragraphs (b), (c) and (d) of this section, a veteran or servicemember who is eligible for basic educational assistance is entitled to 36 months of basic educational assistance (or the equivalent thereof in part-time educational assistance). (38 U.S.C. 1413; Pub. L. 98-525)

(b) *Entitlement: individual discharged for service-connected disability or hardship.* (1) An eligible individual is entitled to one month of basic educational assistance (or equivalent thereof in part-time basic educational assistance) for each month of the individual's active duty service when the individual—

(i) Establishes eligibility through meeting the eligibility requirements of § 21.7042 or § 21.7044,

(ii) Serves less than 36 months of continuous active duty service after June 30, 1985, (or less than 24 months of continuous active duty service after June 30, 1985, if his or her initial obligated period of active duty is less than 3 years), and

(iii) Is discharged or released from active duty either for a service-connected disability, or under 10 U.S.C. 1173 (hardship discharge).

(2) Entitlement will be calculated in whole months.

(3) The following types of time lost are not countable in determining the extent of a veteran's or servicemember's entitlement:

(i) Excess leave,

(ii) Noncreditable time, and

(iii) Not-on-duty time.

(38 U.S.C. 1413(a); Pub. L. 98–525)

(c) *Entitlement based on service in the Selected Reserve.* (1) An individual is entitled to one month of basic educational assistance (or the equivalent thereof in part-time basic educational assistance) for each month of the individual's active duty service after June 30, 1985, and month of basic educational assistance (or the equivalent thereof in part-time basic educational assistance) for each four months served by the individual in the Selected Reserve (other than a month in which the individual serves on active duty) when the individual—

(i) Establishes eligibility through meeting the eligibility requirements of § 21.7042 or § 21.7044, and

(ii) Bases his or her eligibility upon a combination of service on active duty and service in the Selected Reserve as described in § 21.7042(b) and § 21.7044(b).

(2) Entitlement will be calculated in whole months.

(3) The following types of time lost are not countable in determining the extent of a veteran's or servicemember's entitlement:

(i) Excess leave,

(ii) Noncreditable time, and

(iii) Not-on-duty time.

(4) A veteran described in this paragraph is entitled to one day of basic educational assistance for every four days service in the Selected Reserve in excess of the number of months of service in the Selected Reserve which is evenly divisible by four.

(5) The VA will consider a veteran to be entitled to 36 months of basic educational assistance when he or she—

(i) Initially enters on active duty after June 30, 1985;

(ii) Is attempting to establish eligibility through service in the Selected Reserve;

(iii) Has completed the active duty service required in § 21.7042; and

(iv) Is participating in the Selected Reserve, but has not participated for the length of time required in § 21.7042.

(38 U.S.C. 1411, 1412; Pub. L. 98–525)

(d) *Entitlement affected by failure to complete required Selected Reserve service.* If a veteran attempts to establish eligibility through a combination of active duty service and service in the Selected Reserves, but fails to do so, his or her entitlement shall be the number of months to which he or she is entitled on the basis of his or her active duty service. (38 U.S.C. 1411, 1412; Pub. L. 98–525)

(e) *Repayment of an education loan affects entitlement.* A period of service counted for the purpose of repayment under section 902 of the Department of Defense Authorization Act, 1981, of an education loan may not also be counted for the purposes of determining the number of months of the veteran's or servicemember's entitlement to basic educational assistance. Therefore, in determining a veteran's or servicemember's entitlement, the VA will—

(1) Determine his or her entitlement as provided in paragraph (a), (b), (c) or (d) of this section, as appropriate, and

(2) Subtract from the figure determined in paragraph (e)(1) of this section the number of months of service counted for the purposes of repayment of an educational loan under section 902 of the Department of Defense Authorization Act, 1981.

(38 U.S.C. 1433(b); Pub. L. 98–525)

(f) *Limitation on entitlement.* Except as provided in § 21.7135(s) no one is entitled to more than 36 months of full-time basic educational assistance (or its equivalent in part-time educational assistance). (38 U.S.C. 1413(c); Pub. L. 98–525)

§ 21.7074 Entitlement to supplemental educational assistance.

In determining the entitlement of a veteran or servicemember who is eligible for supplemental educational assistance the VA shall—

(a) Calculate the veteran's or servicemember's entitlement to basic educational assistance on the day he or she establishes eligibility for supplemental educational assistance, and

(b) Credit the veteran or servicemember with the same number of months and days entitlement to supplemental educational assistance as the number calculated in paragraph (a) of this section.

(38 U.S.C. 1423; Pub. L. 98–525)

§ 21.7076 Entitlement charges.

(a) *Overview.* The VA will make charges against entitlement as stated in this section. Charges will be made against the entitlement the veteran or servicemember has to educational assistance under 38 U.S.C. ch. 30. After December 31, 1989, there will be a charge (for record purposes only) against the entitlement, if any, which he or she may have under 38 U.S.C. ch. 34. The charges against entitlement under 38 U.S.C. ch. 34 will not count against the 48 months of total entitlement under both 38 U.S.C. chs. 30 and 34 to which the veteran or servicemember may be entitled. (See § 21.4020(a)). Charges are based upon the principle that a veteran or servicemember who trains full time for one day should be charged one day of entitlement. The provisions of this section apply to—

(1) Veterans and servicemembers training under 38 U.S.C. ch. 30, and

(2) Veterans training under 38 U.S.C. ch. 31 who make a valid election under § 21.21 to receive educational assistance equivalent to that paid to veterans under 38 U.S.C. ch. 30.

(38 U.S.C. 1413; Pub. L. 98–525)

(b) *Determining entitlement charge.* (1) The VA will make a charge against entitlement—

(i) On the basis of total elapsed time (one day for each day of pursuit) if the servicemember or veteran is pursuing the program of education on a full-time basis,

(ii) On the basis of a proportionate rate of elapsed time, if the veteran or servicemember is pursuing the program of education on a three-quarter, one-half or less than one-half time basis. For the purpose of this computation, training time which is less than one-half, but more than one-quarter time, will be treated as though it were one-quarter time training.

(2) The VA will compute elapsed time from the commencing date of the award to date of discontinuance. If the veteran or servicemember changes his or her training time after the commencing date of the award, the VA will—

(i) Divide the enrollment period into separate periods of time during which the veteran's or servicemember's training time remains constant, and

(ii) Compute the elapsed time separately for each time period.

(38 U.S.C. 1413; Pub. L. 98–525)

(c) *Overpayment cases.* The VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy; is waived, and is not recovered; or is compromised.

(1) If the overpayment is discharged in bankruptcy or is waived and is not recovered, the charge against entitlement will be at the appropriate rate for the elapsed period covered by

the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by—

(i) Subtracting the portion of the debt attributable to interest, administrative costs of collection, court costs and marshal fees from the compromise offer,

(ii) Subtracting the amount determined in paragraph (c)(3)(i) of this section from the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees),

(iii) Dividing the result obtained in paragraph (c)(3)(ii) of this section by the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees), and

(iv) Multiplying the percentage obtained in paragraph (c)(3)(iii) of this section by the amount of the entitlement which represents the whole overpaid period.

(38 U.S.C. 1413; Pub. L. 98-525)

(d) *Interruption to conserve entitlement.* A veteran may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An educational institution may not certify a perof of enrollment for a fractional part of the normal term, quarter or semester, if the veteran or servicemember is enrolled for the entire term, quarter or semester. The VA will make a charge against entitlement for the entire period of certified enrollment, if the veteran or servicemember is otherwise eligible for educational assistance, except when educational assistance is interrupted under any of the following conditions.

(1) Enrollment is terminated;

(2) The veteran or servicemember cancels his or her enrollment, and does not negotiate an educational assistance check for any part of the certified period of enrollment;

(3) The veteran or servicemember interrupts his or her enrollment at the end of any term, quarter or semester within the certified period of enrollment, and does not negotiate a check for educational assistance for the succeeding term, quarter or semester;

(4) The veteran or servicemember requests interruption or cancellation for any break when a school was closed during a certified period of enrollment, and the VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation. Whether the veteran or servicemember negotiated a check for educational assistance for the certified period is immaterial.

(38 U.S.C. 1413; Pub. L. 98-525)

Counseling

§ 21.7100 Counseling.

A veteran or servicemember may receive counseling from the VA before beginning training and during training.

(a) *Purpose.* The purpose of counseling is—

(1) To assist in selecting an objective;

(2) To develop a suitable program of education;

(3) To select an educational institution appppropriate for the attainment of the educational objective;

(4) To resolve any personal problems which are likely to interfere with the successful pursuit of a program; and

(5) To select an employment objective for the veteran that would be likely to provide the veteran with satisfactory employment opportunities in light of his or her personal circumstances.

(38 U.S.C. 1434, 1663; Pub. L. 98-525)

(b) *Counseling not required.* Counseling is never required for those individuals eligible for educational assistance established under 38 U.S.C. ch. 30. (38 U.S.C. 1434, 1663; Pub. L. 98-525)

(c) *Availability of counseling.* Counseling is available for—

(1) Identifying and removing reasons for academic difficulties which may result in interruption or discontinuance of training, or

(2) In considering changes in career plans and making sound decisions about the changes.

(38 U.S.C. 1434, 1663; Pub. L. 98-525)

(d) *Requested counseling.* The VA shall provide counseling as needed for the purposes identified in paragraphs (a) and (c) of this section upon request of the individual. The VA shall take appropriate steps (including individual notification where feasible) to acquint veterans and servicemembers with the availability and advantages of counseling services. (38 U.S.C. 1434, 1663; Pub. L. 98-525)

§ 21.7103 Travel expenses.

The VA will not pay for any costs of travel to and from the place of counseling for anyone who requests counseling under 38 U.S.C. ch. 30. (38 U.S.C. 111)

Programs of Education

§ 21.7110 Selection of a program of education.

(a) *General requirement.* An individual must be pursuing an approved program of education in order to receive educational assistance. (38 U.S.C. 1414, 1423; Pub. L. 98-525)

(b) *Approval of a program of education.* The VA will approve a program of education under 38 U.S.C. ch. 30 selected by an eligible veteran or servicemember if—

(1) It meets the definition of a program of education found in § 21.7020(b)(22),

(2) It has an objective as described in § 21.7020(b) (13) or (21),

(3) The courses and subjects in the program are approved for VA training, and

(4) The veteran or servicemember is not already qualified for the objective of the program.

(38 U.S.C. 1402(3), 1434, 1671; Pub. L. 98-525)

§ 21.7112 Programs of education combining two or more types of courses.

An approved program may consist of courses offered by two educational institutions concurrently, or courses offered through class attendance and by television concurrently. An educational institution may contract the actual training to another educational institution or entity, provided the course is approved by the State approving agency having approval jurisdiction of the educational institution or entity which actually provides the training.

(a) *Concurrent enrollment.* When a veteran or servicemember cannot successfully schedule his or her complete program at one educational institution, the VA may approve a program of concurrent enrollment. When requesting such a program the veteran or servicemember must show that his or her complete program of education is not available at the educational institution in which he or she will pursue the major portion of his or her program (the primary educational institution), or that it cannot be scheduled successfully within the period in which he or she plans to complete his or her program.

(1) When the standards for measurement of the courses pursued concurrently in the two educational institutions are different, the extent of the course will be determined by

converting the measurement of courses in the second educational institution to its equivalent in value to measurement required for full-time courses in the primary educational institution; e.g. school courses on a clock-hour basis converted to its equivalent in value to semester hours of credit will be .56 semester credits (14/25) or .46 semester credits (14/30), as applicable, for each clock hour of attendance.

(38 U.S.C. 1434(b); Pub. L. 98–525)

(b) *Courses offered under contract.* In administering benefits payable under 38 U.S.C. ch. 30, the VA will apply the provisions of § 21.4233(e) in the same manner as they are applied under 38 U.S.C. ch. 34. (38 U.S.C. 1434(a); Pub. L. 98–525)

(c) *Television.* In determining whether a veteran or servicemember may pursue part of a program of education under 38 U.S.C. ch. 30 by television, the VA will apply the provisions of § 21.4233(c) in the same manner as they are applied in making similar determinations for people training under 38 U.S.C. ch. 34 and 36. (38 U.S.C. 1434, 1673(c); Pub. L. 98–525)

§ 21.7114 Change of program.

In determining whether a veteran or servicemember may change his or her program of education under 38 U.S.C. ch. 30, the VA will apply the provisions of § 21.4234 in the same manner as they are applied in making similar determinations for veterans training under 38 U.S.C. ch. 34. The VA will not consider programs of education a veteran or servicemember may have pursued under 38 U.S.C. ch. 34 or 36 before January 1, 1990, if he or she wishes to change programs of education under 38 U.S.C. ch. 30. (38 U.S.C. 1434, 1791; Pub. L. 98–525)

Courses

§ 21.7120 Courses included in programs of education.

(a) *General.* Generally, the VA will approve, and will authorize payment of educational assistance, for the individual's enrollment in any course or subject which a State approving agency has approved as provided in § 21.7220 and which forms a part of a program of education as defined in § 21.7020(b)(22). Restrictions on this general rule are stated in § 21.7222(b), however. (38 U.S.C. 1402(3), 1652; Pub. L. 98–525)

(b) *Avocational and recreational courses are restricted.*

(1) The VA will not pay educational assistance for an enrollment in any course—

(i) Which is avocational or recreational in character, or

(ii) The advertising for which contains significant avocational or recreational themes.

(2) The VA presumes that the following courses are avocational or recreational in character unless the veteran or servicemember justifies their pursuit to the VA as provided in paragraph (b)(3) of this section. The courses are:

(i) Any photography course or entertainment course, or

(ii) Any music course, instrumental or vocal, public speaking course or courses in dancing, sports or athletics, such as horseback riding, swimming, fishing, skiing, golf, baseball, tennis, bowling, sports officiating, or other sport or athletic courses, except courses of applied music, physical education, or public speaking which are offered by institutions of higher learning for credit as an intergral part of a program leading to an educational objective, or

(iii) Any other type of course which the VA determines to be avocational or recreational.

(3) To overcome the presumption that a course is avocational or recreational in character, the veteran or servicemember must establish that the course will be of bona fide use in the pursuit of his or her present or contemplated business or occupation.

(38 U.S.C. 1434, 1673; Pub. L. 98–525)

(c) *Flight training.* The VA may pay educational assistance for an enrollment in a flight training course only if an institution of higher learning offers the course for credit toward the standard college degree the veteran or servicemember is pursuing. The VA will not otherwise approve an enrollment in a flight training course. (38 U.S.C. 1414, 1423; Pub. L. 98–525)

§ 21.7122 Courses precluded.

(a) *Unapproved courses.* The VA will not pay educational assistance for an enrollment in any course which has not been approved by a State approving agency or by the VA when that agency acts as a State approving agency. The VA will not pay educational assistance for a new enrollment in a course when a State approving agency has suspended the approval of the course for new enrollments, nor for any period within any enrollment after the date the State approving agency disapproves a course. See § 21.7220. (38 U.S.C. 1434, 1772; Pub. L. 98–525)

(b) *Courses outside a program of education.* The VA will not pay educational assistance for an enrollment in any course which is not part of a veteran's or servicemember's program of education. (38 U.S.C. 1402(3), 1652(b); Pub. L. 98–525)

(c) *Erroneous, deceptive, misleading practices.* The VA will not pay educational assistance for an enrollment in any course offered by an educational institution which uses advertising, sales or enrollment practices which are erroneous, deceptive or misleading by actual statement, omission or intimation. The VA will apply the provisions of § 21.4252(h) in making these decisions with regard to enrollments under 38 U.S.C. ch. 30 as it does in making similar decisions with regard to enrollments under 38 U.S.C. ch. 34. (38 U.S.C. 1434, 1796; Pub. L. 98–525)

(d) *Restrictions on enrollment: percentage of students receiving financial support.* Except as otherwise provided the VA shall not approve an enrollment in any course for a veteran or servicemember not already enrolled for any period during which more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees or other charges paid for them by the educational institution or by the VA pursuant to title 38, United States Code. This restriction may be waived in whole or in part. In determining which courses to apply this restriction to and whether to waive this restriction, the VA will apply the provisions of § 21.4201 to enrollments under 38 U.S.C. ch. 30 in the same manner as it does to enrollments under 38 U.S.C. ch. 34. (38 U.S.C. 1434, 1673(d); Pub. L. 98–525)

(e) *Other courses.* The VA shall not pay educational assistance for—

(1) An audited course (see § 21.4252(i),

(2) A course for which the veteran or servicemember received a nonpunitive grade in the absence of mitigating circumstances (See § 21.4252(j)),

(3) New enrollments in a course where approval has been suspended by a State approving agency,

(4) Certain courses being pursued by nonmatriculated students as provided in § 21.4252(l),

(5) A course from which the veteran or servicemember withdrew without mitigating circumstances,

(6) Correspondence courses, or

(7) An enrollment in a course offered by a proprietary school when the veteran or servicemember is an official of the school authorized to sign certificates of enrollment or monthly certificates of attendance or monthly verifications of pursuit, an owner or an operator.

(38 U.S.C. 1402(3), 1434, 1772(a), 1780(a); Pub. L. 98–525)

§ 21.7124 Overcharges.

The VA may disapprove an educational institution for further enrollments, when the educational institution charges or receives from a veteran or servicemember tuition and fees that exceed the established charges which the educational institution requires from similarly circumstanced nonveterans enrolled in the same course. (38 U.S.C. 1434, 1790; Pub. L. 98-525)

Payments-Educational Assistance

§ 21.7130 Educational assistance.

The VA will pay educational assistance to an eligible veteran or servicemember while he or she is pursuing approved courses in a program of education at the rates specified in §§ 21.7136, 21.7137 and 21.7139. (38 U.S.C. 1415, 1422, 1432; Pub. L. 98-525)

§ 21.7131 Commencing dates.

The commencing date of an award or increased award of educational assistance will be determined under this section.

(a) *Entrance or reentrance including change of program, training time, or educational institution.* When an eligible veteran or servicemember enters or reenters into training, the commencing date of his or her award of educational assistance shall be the latest of the following dates.

(1) The date the educational institution certifies under paragraph (b) or (c) of this section.

(2) The date one year before the VA receives the veteran's or servicemember's application or enrollment certification, whichever is the later. (See § 21.7032)

(3) The effective date of the approval of the course, or one year before the date the VA receives the approval notice, whichever is later.

(4) The date of reopened application under paragraph (d) of this section.

(38 U.S.C. 1414, 1423, 1434, 1772; Pub. L. 98-525)

(b) *Certification by the educational institution—the course or subject leads to a standard college degree.* (1) When the student enrolls in any course or subject other than one described in paragraphs (b)(2) and (3) or (c) of this section, the commencing date of the award or increased award of educational assistance will be—

(i) The date of registration in the term, quarter or semester, or

(ii) The date of reporting when the individual is required by the published standards of the educational institution to report in advance of registration.

(2) When the student enrolls in a resident course or subject leading to a standard college degree and the first day of classes does not occur before the end of the first regularly scheduled calendar week of classes during a term, quarter or semester, the commencing date of the award or increased award of educational assistance will be the first day of classes.

(3) When the student enrolls in a resident course or subject leading to a standard college degree and the first day of classes is more than 14 days after the date of registration, the commencing date of the award or the increased award of educational assistance will be the first day of classes.

(38 U.S.C. 1414, 1423; Pub. L. 98-525)

(c) *Certification by educational institution—course does not lead to a standard college degree.* When a veteran or servicemember enrolls in a course not leading to a standard college degree, the commencing date of the award of educational assistance shall be the first date of the individual's class attendance. (38 U.S.C. 1414, 1423; Pub. L. 98-525)

(d) *Reopened application after abandonment (§ 21.7032).* When the veteran or servicemember reopens his or her claim after abandoning it, the commencing date of the award of educational assistance shall be the date the VA receives the individual's application or enrollment certificate, whichever is later. (38 U.S.C. 1434, 1671(a); Pub. L. 98-525)

(e) *Increase for a dependent.* A veteran who was eligible for educational assistance allowance under 38 U.S.C. ch. 34 on December 31, 1989, is entitled to additional educational assistance for dependents. No other veteran or servicemember is eligible for additional educational assistance. The effective date for the additional educational assistance is determined as follows.

(1) The veteran may acquire one or more dependents before he or she enters or reenters a program of education. When this occurs, the following rules apply.

(i) The effective date of the increase will be the date of entrance or reentrance if—

(A) The VA receives the claim for the increase within 1 year of the date of entrance or reentrance, and

(B) The VA receives any necessary evidence within 1 year of its request.

(ii) The effective date of the increase will be the date the VA receives notice of the dependent's existence if—

(A) The VA receives the claim for the increase more than one year after the date of entrance or reentrance, and

(B) The VA receives the necessary evidence within 1 year of its request.

(iii) The effective date will be the date the VA receives all necessary evidence, if that evidence is received more than 1 year from the date the VA requests it.

(2) If the veteran acquires a dependent after he or she enters or reenters a program of education, the increase will be effective on the latest of the following dates:

(i) Date of claim. This term means the following in order of their applicability:

(A) Date of the veteran's marriage, or birth of his or her child, or his or her adoption of a child, if the evidence of the event is received within 1 year of the event.

(B) The date the VA receives notice of the dependent's existence if evidence is received within 1 year of the VA request.

(C) The date the VA receives evidence if this date is more than 1 year after the VA request.

(ii) The date the dependency arises.

(iii) The date the law permits for benefits for dependents generally.

(38 U.S.C. 3010(f), (n); Pub. L. 98-525)

(See § 3.667 of this chapter as to effective dates with regard to children age 18 and older who are attending school.)

(f) *Liberalizing laws and VA issues.* When a liberalizing law or VA issue affects the commencing date of a veteran's or servicemember's award of educational assistance, that commencing date shall be in accordance with facts found, but not earlier than the effective date of the act or administrative issue. (38 U.S.C. 3012(b), 3013; Pub. L. 98-525)

(g) *Correction of military records (§ 21.7050(b)).* The eligibility of a veteran may arise because the nature of the veteran's discharge or release is changed by appropriate military authority. In these cases the commencing date of educational assistance will be in accordance with facts found, but not earlier than the date the nature of the discharge or release was changed. (38 U.S.C. 1431(b); Pub. L. 98-525)

(h) *Individuals in a penal institution.* If a veteran or servicemember is paid a reduced rate of educational assistance under § 21.7139(c), (d), (e), (f) and (g), the rate will be increased or assistance will commence effective the earlier of the following dates:

(1) The date the tuition and fees are no longer being paid under another Federal program or a State or local program, or

(2) The date of the release from the prison or jail. (38 U.S.C. 1434, 1682(g); Pub. L. 98–525)

(i) *Commitment to service in the Selected Reserve.* If a veteran has established eligibility to educational assistance through two years' active duty service, and he or she establishes entitlement to an increased monthly rate through commitment to serve four years in the Selected Reserve, the effective date of the increase is the date on which he or she—

(1) Is committed to serve four years in the Selective Reserve, and

(2) Is attached to a unit of the Selected Reserve.

(38 U.S.C. 1412; Pub. L. 98–525)

§ 21.7133 Suspension or discontinuance of payments.

The VA may suspend or discontinue payments of educational assistance, and in such cases the VA will apply §§ 21.4133, 21.4134 and 21.4207 in the same manner as they are applied in the administration of chapters 34 and 36.

(38 U.S.C. 1434, 1790; Pub. L. 98–525)

§ 21.7135 Discontinuance dates.

The effective date of reduction or discontinuance of educational assistance will be as stated in this section. Reference to reduction of educational assistance due to the loss of a dependent only applies to veterans who were eligible to receive educational assistance allowance under 38 U.S.C. ch. 34 on December 31, 1989. No other veteran or servicemember will have his or her educational assistance reduced due to a loss of a dependent. If more than one type of reduction or discontinuance is involved, the earliest date will control.

(a) *Death of veteran or servicemember.* When a veteran or servicemember dies, the effective date of discontinuance of educational assistance shall be the last date of attendance. (38 U.S.C. 1414, 1423; Pub. L. 98–525)

(b) *Death of dependent.* When a veteran's dependent dies, and the veteran has been receiving additional educational assistance based on the dependent, the effective date of reduction of the veteran's educational assistance shall be the last day of the month in which the death occurs. (38 U.S.C. 3012(b), 3013; Pub. L. 98–525)

(c) *Divorce.* If the veteran becomes divorced, the effective date of reduction of his or her educational assistance is the last day of the month in which the divorce occurs. (38 U.S.C. 3012(b), 3013; Pub. L. 98–525)

(d) *Dependent child.* If the veteran's award of educational assistance must be reduced because his or her dependent child ceases to be dependent, the effective date of reduction will be as follows.

(1) If the veteran's child marries, the effective date of reduction will be the last day of the month in which the marriage occurs.

(2) If the veteran's child reaches age 18, the effective date of reduction will be the day preceding the dependent child's 18th birthday.

(3) If the veteran is receiving additional educational assistance based on a child's school attendance between the child's 18th and 23rd birthdays, the effective date of reduction of the veteran's educational assistance will be the last day of the month in which the dependent child stops attending school, or the day before the dependent child's 23rd birthday, whichever is earlier.

(4) If the veteran is receiving additional educational assistance because his or her child is helpless, the effective date of reduction will be the last day of the month following 60 days after the VA notifies the veteran that the dependent child's helplessness has ceased.

(38 U.S.C. 3012(b), 3013; Pub. L. 98–525)

(e) *Course discontinued, course interrupted, course terminated, course not satisfactorily completed or withdrawn from.* (1) If the veteran or servicemember withdraws from all courses or receives all nonpunitive grades, and in either case there are no mitigating circumstances, the VA will terminate or reduce educational assistance effective the first date of the term in which the withdrawal occurs or the first date of the term for which grades are assigned.

(2) If the veteran or servicemember withdraws from all courses with mitigating circumstances or withdraws from all courses such that a punitive grade is or will be assigned for those courses, the VA will terminate educational assistance for—

(i) Residence training: last date of attendance; and

(ii) Independent study: official date of change in status under the practices of the educational institution.

(38 U.S.C. 1434, 1780(a); Pub. L. 98–525)

(f) *Reduction in the rate of pursuit of the course.* (1) If the veteran or servicemember reduces training by withdrawing from part of a course with mitigating circumstances, but continues training in part of the course, the VA will reduce the veteran's or servicemember's educational assistance at the end of the month or the end of the term in which the withdrawal occurs, whichever is earlier; except that the VA will reduce educational assistance effective the first date of the term in which the reduction occurs, if the reduction occurs on that date.

(2) If the veteran or servicemember reduces training by withdrawing from a part of a course without mitigating circumstances, the VA will reduce the veteran's or servicemember's educational assistance effective the first date of the enrollment in which the reduction occurs.

(3) A veteran or servicemember, who enrolls in several subjects and reduces his or her rate of pursuit by completing one or more of them while continuing training in the others, may receive an interval payment based on the subjects completed if the requirements of § 21.7140(b) are met. If those requirements are not met, the VA will reduce the individual's educational assistance effective the date the subject or subjects were completed.

(38 U.S.C. 1434, 1780; Pub. L. 98–525)]

(g) *End of course or period of enrollment.* If a veteran's or servicemember's course or period of enrollment ends, the effective date of reduction or discontinuance of his or her award of educational assistance will be the ending date of the course or period of enrollment as certified by the educational institution. (38 U.S.C. 1434(b), 1780 (a); Pub. L. 98–525)

(h) *Nonpunitive grade.* (1) If the veteran or servicemember does not withdraw, but nevertheless receives a nonpunitive grade in a particular course, the VA will reduce his or her educational assistance effective the first date of enrollment for the term in which the grade applies, when no mitigating circumstances are found.

(2) If an individual does not withdraw, but nevertheless receives a nonpunitive grade in a particular course, the VA will reduce his or her educational assistance effective the last date of attendance when mitigating circumstances are found.

(3) If an individual receives a nonpunitive grade through nonattendance in a particular course, the VA will reduce the individual's educational assistance effective the last date of attendance when mitigating circumstances are found.

(4) If an individual receives a nonpunitive grade through nonattendance in a particular course, the VA will reduce the individual's educational assistance effective the first date of enrollment in which the grade applies, when no mitigating circumstances are found.

(38 U.S.C. 1434, 1780; Pub. L. 98–525)

(i) *Discontinued by VA.* If the VA discontinues payment to a veteran or servicemember following the procedures stated in § 21.4207, the date of discontinuance of payment of educational assistance will be—

(1) Date on which payments first were suspended by the Director of a VA field station as provided in § 21.4134, if the discontinuance was preceded by such a suspension.

(2) End of the month in which the decision to discontinue, made by the VA under § 21.7133 or § 21.4207, is effective, if the Director of a VA field station did not suspend payments before the discontinuance.

(38 U.S.C. 1434, 1780; Pub. L. 98–525)

(j) *Disapproval by State approving agency.* If a State approving agency disapproves a course in which a veteran or servicemember is enrolled, the date of discontinuance of payment of educational assistance will be—

(1) Date on which payments first were suspended by the Director of a VA field station as provided in § 21.4134, if disapproval was preceded by such a suspension.

(2) End of the month in which disapproval is effective or the VA receives notice of the disapproval, whichever is later, provided that the Director of a VA field station did not suspend payments before the disapproval.

(38 U.S.C. 1434, 1772(a), 1790; Pub. L. 98–525)

(k) *Disapproval by VA.* If the VA disapproves a course in which a veteran or servicemember is enrolled, the effective date of discontinuance of payment of educational assistance will be—

(1) The date on which the Director of a VA field station first suspended payments, as provided in § 21.4134, if such a suspension preceded the disapproval.

(2) The end of the month in which the disapproval occurred, provided that the Director of a VA field station did not suspend payments before the disapproval.

(38 U.S.C. 1434, 1771(b), 1772(a), 1790; Pub. L. 98–525)

(l) *Unsatisfactory progress.* If a veteran's or servicemember's progress is unsatisfactory, his or her educational assistance shall be discontinued effective the earlier of the following:

(1) The date the educational institution discontinues the veteran's or servicemember's enrollment, or

(2) The date on which the veteran's or servicemember's progress becomes unsatisfactory according to the educational institution's regularly established standards of progress.

(38 U.S.C. 1434–1674; Pub. L. 98–525)

(m) *Required certifications not received after certification of enrollment.* If the VA does not timely receive the veteran's or servicemember's certification of attendance or does not timely receive the educational institution's endorsement of the certification or the educational institution's certification of attendance or pursuit, the VA will assume that the veteran or servicemember has withdrawn. The VA will apply the provisions of paragraph (e) of this section. The VA considers the receipt of a certificate of attendance to be timely if it is received within 60 days of the last day of the month for which attendance is to be certified.

(38 U.S.C. 1434(b); 1780; Pub. L. 98–525)

(n) *False or misleading statements.* If educational assistance is paid as the result of false or misleading statements, see § 21.7158.

(38 U.S.C. 1434, 1790; Pub. L. 98–525)

(o) *Conflicting interests (not waived).* If an educational institution and the VA have conflicting interests as provided in § 21.4005 and § 21.7305, and the VA does not grant the veteran a waiver, the date of discontinuance shall be 30 days after the date of the letter notifying the veteran. (38 U.S.C. 1434, 1783; Pub. L. 98–525)

(p) *Incarceration in prison or penal institution for conviction of a felony.* (1) The provisions of this paragraph apply to a veteran or servicemember whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under § 21.7139 (c), (d), (e), (f) or (g).

(2) The reduced rate or discontinuance will be effective the latest of the following dates:

(i) The first day on which all or part of the veteran's or servicemember's tuition and fees were paid by a Federal, State or local program.

(ii) The date the veteran or servicemember is incarcerated in prison or penal institution, or

(iii) The commencing date of the award as determined by § 21.7131.

(38 U.S.C. 1434, 1682(g); Pub. L. 98–525)

(q) *Active duty.* If a veteran reenters on active duty, the effective date of reduction of his or her award of educational assistance shall be the day before the veteran's entrance on active duty. (This reduction does not apply to brief periods of active duty for training if the educational institution permits absence for active duty for training without considering the veteran's pursuit of a program of education to be interrupted. If the course does not lead to a standard college degree, absence for active duty for training must be reported as required by § 21.7154). (38 U.S.C. 1432, Pub. L. 98–525)

(r) *Record-purpose charge against entitlement under 38 U.S.C. ch. 34 equals entitlement that remained on December 31, 1989.* A veteran who is receiving basic educational assistance at the rates stated in § 21.7137(a), will have his or her award reduced to the rates found in § 21.7136(a) effective the date the total of the veteran's record-purpose charges against his or her entitlement under 38 U.S.C. ch. 34 equals the entitlement to that benefit which the veteran had on December 31, 1989. (38 U.S.C. 1415(c); Pub. L. 98–525)

(s) *Exhaustion of entitlement under 38 U.S.C. ch. 30.* (1) If an individual who is enrolled in an educational institution regularly operated on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. ch. 30, the discontinuance date shall be the last day of the quarter or semester in which entitlement is exhausted.

(2) If an individual who is enrolled in an educational institution not regularly operated on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. ch. 30 after more than half of the course is completed, the discontinuance date shall be the earlier of the following:

(i) The last day of the course, or

(ii) 12 weeks from the day the entitlement is exhausted.

(3) If an individual who is enrolled in an educational institution not regularly operated on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. ch. 30 before completing the major portion of the course, the discontinuance date will be the date the entitlement is exhausted.

(38 U.S.C. 1431(e); Pub. L. 98–525)

(t) *Eligibility expires.* If the veteran is pursuing a course on the date of expiration of eligibility as determined under § 21.7050 or § 21.7051 the VA will discontinue educational assistance effective the day preceding the end of the eligibility period. (38 U.S.C. 1434(a); Pub. L. 98–525)

(u) *Veteran fails to participate satisfactorily in the Selected Reserve.* If a veteran is attempting to establish eligibility through service on active duty combined with service in the Selected Reserve, and he or she fails to participate satisfactorily in the Selected

Reserve before completing the required service in the Selected Reserve, the effective date of reduction of the award of educational assistance will be the date the Secretary determines that he or she failed to participate satisfactorily.

(38 U.S.C. 1412; Pub. L. 98–525)

(v) *Error-payee's or administrative.* (1) When an act of commission or omission by a payee or with his or her knowledge results in an erroneous award of educational assistance, the effective date of the reduction or discontinuance will be the effective date of the award, or the day before the act, whichever is later, but not before the date on which the award would have ended had the act not occurred.

(2) When an administrative error or error in judgment results in an erroneous award, the award will be reduced or terminated effective the date of last payment.

(38 U.S.C. 3012(b), 3013; Pub. L. 98–525)

(w) *Forfeiture for fraud.* If a veteran's or servicemember's educational assistance must be forfeited due to fraud, the effective date of discontinuance shall be the later of—

(1) The effective date of the award, or

(2) The day before the date of the fraudulent act.

(38 U.S.C. 3503; Pub. L. 98–525)

(x) *Forfeiture for treasonable acts or subversive activities.* If a veteran's or servicemember's educational assistance must be forfeited due to treasonable acts or subversive activities, the effective date of discontinuance shall be the later of—

(1) The effective date of the award, or

(2) The day before the date the veteran or servicemember committed the treasonable act or subversive activities for which he or she was convicted.

(38 U.S.C. 3504, 3505; Pub. L. 98–525)

(y) *Change in law or VA issue or interpretation.* If there is a change in applicable law or VA issue, or in the Veterans Administration's application of the law or VA issue, the VA will use the provisions of § 3.114(b) of this chapter to determine the date of discontinuance of the veteran's or servicemember's educational assistance.

(38 U.S.C. 3012, 3013; Pub. L. 98–525)

(z) *Except as otherwise provided.* If a veteran's or servicemember's educational assistance must be discontinued for any reason other than those stated in the other paragraphs of this section, the VA will determine the date of discontinuance of educational assistance on the basis of facts found.

(38 U.S.C. 3012(a), 3013; Pub. L. 98–525)

§ 21.7136 Rates of payment of basic educational assistance.

(a) *Rates.* Except as otherwise provided in this section, the monthly rate of basic educational assistance payable to a veteran other than one to whom § 21.7137 applies, or one to whom paragraph (b) of this section applies, is at least the rate stated in this table. The rate also applies to a veteran who formerly was eligible under 38 U.S.C. ch. 34, and who has received a record-purpose charge against his or her entitlement under that chapter equal to the entitlement he or she had remaining on December 31, 1989.

Training	Monthly rate
Full-time	$300.
¾ time	225.
½ time	150.
Less than ½ but more than ¼ time.	150 See § 21.7136(d).
¼ time or less	75 See § 21.7136(d).

(38 U.S.C. 1415(c); Pub. L. 98–525)

(b) *Rates for veterans whose initial obligated period of active duty is less than three years.* Except as otherwise provided in this section, the monthly rate of basic educational assistance payable to a veteran whose initial obligated and is not committed to serve in the Selective Reserve for a period of four years is at least the amount stated in this table.

Training	Monthly rate
Full-time	$250.00.
¾ time	187.50.
½ time	125.00.
Less than ½ but more than ¼ time.	125.00 See § 21.7136(d).
¼ time or less	62.50 See § 21.7136(d).

(38 U.S.C. 1415(c); Pub. L. 98–525)

(c) *Increase in basic educational assistance rates ("kicker").* The Secretary concerned may increase the amount of basic educational assistance payable to an individual who has a skill or speciality which the Secretary concerned designates as having a critical shortage of personnel or for which it is difficult to recruit. The amount of the increase is set by the Secretary concerned, but it may not exceed—

(1) $400 per month for full-time training,

(2) $300 per month for three-quarter time training,

(3) $200 per month for one-half time training or for training which is less than one-half, but more than one-quarter time, or

(4) $100 per month for one-quarter time training or less.

(38 U.S.C. 1415(c); Pub. L. 98–525)

(d) *Less than one-half time training and rates for servicemembers.* The monthly rate for a veteran who is pursuing a course on a less than one-half time basis or the monthly rate for a servicemember who is pursuing a program of education if the lesser of—

(1) The monthly rate stated in either paragraph (a) or (b) of this section (as determined by the veteran's or servicemember's initial obligated period of active duty) plus any additional amounts that may be due under paragraph (c) of this section, or

(2) The monthly rate of the cost of the course.

(38 U.S.C. 1415, 1432; Pub. L. 98–525)

§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. ch. 34.

(a) *Minimum rates.* Effective January 1, 1990, the VA will pay basic educational assistance at an increased rate to veterans who were eligible for educational assistance allowance under 38 U.S.C. ch. 34. The veterans must establish eligibility for educational assistance under § 21.7044, and must still have remaining entitlement under 38 U.S.C. ch. 34. Except as otherwise provided in this section, the monthly rate of basic educational assistance will be the rate taken from the following table.

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$488.00	$524.00	$555.00	$16.00
3/4 time	366.50	393.00	416.50	12.00
1/2 time	244.00	262.00	277.00	8.50
Less than 1/2 but more than 1/4 time	244.00	See § 21.7137	(b)	
1/4 time or less	122.00	See § 21.7137	(b)	

(38 U.S.C. 1415(c); Pub. L. 98–525)

(b) *Less than one-half-time training.* The monthly rate for a veteran who is pursuing a course on a less than one-half-time basis is the lesser of—

(1) The monthly rate stated in paragraph (a) of this section, or

(2) The monthly rate of the cost of the course.

(38 U.S.C. 1432; Pub. L. 98-525)

(c) *Rates for servicemembers.* The monthly rate for a servicemember may not exceed the lesser of the following rates (except as provided in paragraph (d) of this section):

(1) The monthly rate of the cost of the course.

(2) The following monthly rates—

(i) $488.00 for full-time training,

(ii) $366.50 for three-quarter time training,

(iii) $244.00 for one-half time training and training that is less than one-half, but more than one-quarter time training, and

(iv) $122.00 for one-quarter time training.

(38 U.S.C. 1415(d); Pub. L. 98-525)

(d) *Increase in basic educational assistance rates ("kicker").* The Secretary concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty which the Secretary concerned designates as having a critical shortage of personnel, or for which it is difficult to recruit. The increase may not be applied to a servicemember whose monthly rate is determined by paragraph (c)(1) of this section, but it can serve to raise the ceiling on monthly rates stated in paragraphs (b) and (c)(2) of this section. The amount of the increase is set by the Secretary concerned, but it may not exceed—

(1) $400 per month for full-time training,

(2) $300 per month for three-quarter-time training,

(3) $200 per month for one-half-time training or for training which is less than one-half but more than one-quarter-time, or

(4) $100 per month for one-quarter-time training or less.

(38 U.S.C. 1415, 1432; Pub. L. 98-525)

(e) *Concurrent benefits.* The VA may pay additional educational assistance to a veteran for a dependent concurrently with additional pension or compensation for the same dependent. (38 U.S.C. 1415(d); Pub. L. 98-525)

(f) *Two veteran cases.* The VA may pay additional educational assistance to a veteran for a spouse who is also a veteran. This will not bar the payment of additional educational assistance or subsistence allowance under § 21.260 to the spouse for the veteran. If the veteran is paid additional educational assistance for a child, that will not bar payment of additional educational assistance or subsistence allowance under § 21.260 to the spouse for the same child.

(38 U.S.C. 1415(d); Pub. L. 98-525)

§ 21.7138 Rates of supplemental educational assistance.

In addition to basic educational assistance, a veteran or servicemember who is eligible for supplemental educational assistance and entitled to it shall be paid supplemental educational assistance at the rate described in this section unless a lesser rate is required by § 21.7139.

(a) *Rates for veterans.* The rate of supplemental educational assistance payable to a veteran is at least the rate stated in this table:

Training	Monthly rate
Full-time	$300.
¾ time	225.
½ time	150.
Less than ½ but more than ¼ time.	150 See § 21.7138(c).
¼ time or less	75 See § 21.7138(c).

(38 U.S.C. 1415(c); Pub. L. 98-525)

(b) *Increase in supplemental educational assistance rates ("kicker").* The Secretary concerned may increase the amount of supplemental educational assistance payable to an individual who has a skill or specialty which the Secretary concerned designates as having a critical shortage of personnel or for which it is difficult to recruit. The amount of the increase is set by the Secretary concerned, but it may not exceed—

(1) $300 per month for full-time training.

(2) $225 per month for three-quarter time training,

(3) $150 per month for one-half time training and for training which is less than one-half-time, but more than one-quarter-time, or

(4) $75 per month for one-quarter time training or less.

(38 U.S.C. 1422(b); Pub. L. 98-525)

(c) *Less than one-half-time training and rates for servicemembers.* The monthly rate of supplemental educational assistance payable to a veteran who is training less than half-time or to a servicemember is determined as follows:

(1) The monthly rate of the veteran's or servicemember's basic educational assistance is determined as provided in §§ 21.7136(d), and 21.7137 (b), (c) and (d).

(2) If the monthly rate of basic educational assistance equals or is greater than the monthly rate of the cost of the course, no supplemental educational assistance is payable.

(3) If the monthly rate of basic educational assistance is less than monthly rate of the cost of the course, the monthly rate of supplemental educational assistance is the lesser of—

(i) The monthly rate provided in paragraph (a) of this section, plus the monthly rate provided in paragraph (b) of this section, if appropriate, or

(ii) The difference between the monthly rate of the cost of the course and the monthly rate of the veteran's or servicemember's basic educational assistance.

(38 U.S.C. 1422; 1432; Pub. L. 98-525)

§ 21.7139 Conditions which resulted in reduced rates.

The monthly rates established in §§ 21.7136, 21.7137 and 21.7138 shall be reduced as stated in this section whenever the circumstances described in this section arise.

(a) *Absences.* A veteran or servicemember enrolled in a course not leading to a standard college degree will have his or her educational assistance reduced for any day of absence which exceeds the maximum allowable absences permitted in this paragraph.

(1) Absence will be charged for a full day when the veteran or servicemember did not attend any scheduled class on that day. A partial day of absence will be charged for any period of absence during or at the end of a day. Partial days of absence during a month will be converted to full days in accordance with the following formula.

(i) The average hours of daily attendance will be computed by dividing the hours of required attendance per week by the days of required attendance per week.

(ii) The absences of less than a full day which occurred during the month will be totaled.

(iii) The total hours of absence for the month as determined by paragraph(a)(i)(ii) of this section will be divided by the average hours of daily attendance as determined by paragraph(a)(1)(i) of this section to determine the veteran's or servicemember's full days of absence. A fractional day in the result will be dropped if it is one-half day or less and increased to the next whole day if more than one-half day.

(iv) An occassional period of nonattendance (not more than two per week) of one-half hour or less will not be counted if it is excused by the educational institution. Any period of nonattendance which is not excused

and a period of nonattendance of more than one-half hour, whether excused or not, will be counted as 1 or more hours of absence. Except for an occasional period of nonattendance of one-half hour or less which is excused by the institution of higher learning any absence of less than an hour will be counted as a full hour of absence.

(2) Maximum allowable absences are as follows:

(i) For a 12-month course requiring attendance for 5 or more days per week, 30 days.

(ii) For a 12-month course requiring attendance for less than 5 days per week, the pro rata part of 30 days which the number of days per week of scheduled attendance bears to 5.

(iii) If the lenght of the course is not 12 months or a multiple of 12, allowable absences will be figured separately for each 12-month period and pro rata for any period which is less than 12 months.

(iv) In computing pro rata allowable absences, a fraction of one-half day or less will be disregarded. A fraction greater than one-half day will be counted as 1 day.

(v) Unused allowable absences may not be carried over from one 12-month period to another, or from one school year to another.

(3) Absences will be charged for—

(i) Days when the veteran or servicemember is scheduled to attend (including Saturday and Sunday if classes are normally scheduled for those days), but he or she does not attend.

(ii) Days when the educational institution is closed for local and school holidays.

(iii) If reported enrollement is on an ordinary school year basis, intervals between terms, quarters and semesters.

(4) Absences will not be charged for—

(i) Days when the educational institution is closed for a weekend period provided classes normally are not scheduled for Saturday or Sunday.

(ii) Days when the educational institution is closed for Federal or State legal holidays or customary, reasonable vacation periods connected with them which are identified as a holiday vacation in the educational institution's approved literature. Generally, the VA will interpret a reasonable period as not more than one calendar week at Christmas and one calendar week at New Year's and shorter periods of time in connection with other legal holidays.

(iii) Days (not to exceed five in any 12-month period) when the educational institution is not in session because of teacher conferences or teacher training sessions.

(iv) At the discretion of the Director of the VA field station of jurisdiction, days of nonattendance within a certified period of enrollement during which the school is closed under an Executive Order of the President or due to an emergency situation.

(5) The reduction in educational assistance payable will be determined by deducting from the month's educational assistance due the veteran or servicemember that portion of the educational assistance otherwise payable as determined by the following table:

Days of scheduled attendance per week	Rate of reduction for each day of excessive absence
5 or more	1/5th.
4	1/20th.
3	1/15th.
2	1/10th.
1	1/5th.

(38 U.S.C. 1434, 1780; Pub. L. 98–525)

(b) *Withdrawals and nonpunitive grades.* Withdrawal from a course or receipt of a nonpunitive grade affects payments to a veteran or servicemember. The VA will not pay benefits to a veteran or servicemember for a course from which the veteran or servicemember withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation unless—

(1) There are mitigating circumstances, and

(2) The veteran or servicemember submits the circumstances in writing to the VA within one year from the date the VA notifies the veteran or servicemember that he or she must submit the mitigating circumstances.

(38 U.S.C. 1434, 1780(a); Pub. L. 98–525)

(c) *No educational assistance for some incarcerated servicemembers.* As with servicemembers who are not incarcerated, the VA will not pay educational assistance to an incarcerated servicemember enrolled in a course for which there are no tuition and fees. Furthermore, the VA will not pay educational assistance to a servicemember who—

(1) Is enrolled in a course where his or her tuition and fees are being paid for by a Federal program (other than one administered by the VA) or by a State or local program, and

(2) Is incarcerated in a Federal, State or local prison or jail for conviction of a felony, and has incurred no expenses for supplies, books or equipment.

(38 U.S.C. 1434, 1682(g); Pub. L. 98–525)

(d) *No educational assistance for some incarcerated veterans.* The VA will pay no educational assistance to a veteran who—

(1) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(2) Is enrolled in a course—

(i) For which there are no tuition and fees, or

(ii) For which tuition and fees are being paid by a Federal program (other than one administered by the VA) or by a State or local program, and

(3) Is incurring no charge for the books, supplies and equipment necessary for the course.

(38 U.S.C. 1434, 1682(g); Pub. L. 98–525)

(e) *Reduced educational assistance for some incarcerated servicemembers.* (1) The VA will pay reduced educational assistance to a servicemember who—

(i) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(ii) Is enrolled in a course where his or her tuition and fees are being paid for entirely or partly by a Federal program (other than one administered by the VA) or by a State or local program, and

(iii) If all the tuition and fees are paid for by such a program, must buy books, supplies or equipment for the course.

(2) The monthly rate of educational assistance payable to a servicemember described in this paragraph shall equal the lowest of the following:

(i) The monthly rate of the portion of the tuition and fees that are not paid by a Federal program (other than one administered by the VA) or a State or local program plus the monthly rate of any charges to the servicemember for the cost of necessary supplies, books and equipment;

(ii) The monthly rate of the portion of the tuition and fees paid by the servicemember plus the monthly rate of the portion of tuition and fees paid by the Federal, State or local program; or

(iii) The monthly rate found in § 21.7136(d) or § 21.7137(c), as appropriate. (38 U.S.C. 1434, 1682(g); Pub. L. 98–525)

(f) *Reduced educational assistance for some incarcerated veterans.* (1) The VA will pay reduced educational assistance to a veteran who—

(i) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(ii) Is enrolled in a course for which the veteran pays some (but not all) of the charges for tuition and fees, or for which a Federal program (other than one administered by the VA) or a State or local program pays all the charges for tuition and fees, but which requires the veteran to pay for books, supplies and equipment.

(2) The monthly rate of educational assistance payable to such a veteran who is pursuing the course on a one-half time or greater basis shall be the lesser of the following:

(i) The monthly rate of the portion of the tuition and fees that are not paid by a Federal program (other than one administered by the VA) or a State or local program plus the monthly rate of the charge to the veteran for the cost of necessary supplies, books and equipment, or

(ii) If the veteran has remaining entitlement under 38 U.S.C. ch. 34, the monthly rate stated in § 21.7137(a) for a veteran with no dependents and the increase provided in § 21.7137(d), if appropriate, plus the monthly rated stated in § 21.7138(a) and (b) for a veteran if the veteran is entitled to supplemental educational assistance, or

(iii) If the veteran has no entitlement under 38 U.S.C. ch. 34, the monthly rate stated in § 21.7136(a) or (b), as appropriate, and the increase provided in § 21.7136(c), if appropriate, plus the monthly rate stated in § 21.738(a) and (b) for a veteran if the veteran is entitled to supplemental educational assistance.

(3) The monthly rate of educational assistance payable to such a veteran who is pursuing the course on a less than one-half time basis or on a one-quarter time basis shall be the lowest of the following:

(i) The monthly rate of the tuition and fees charged for the course,

(ii) The monthly rate of the tuition and fees which the veteran must pay plus the monthly rate of the charge to the veteran for the cost of necessary supplies, books and equipment, or

(iii) The monthly rate determined by § 21.7136(d) or § 21.7137(b), as appropriate, plus the monthly rate stated in § 21.7138(c) if the veteran is entitled to supplemental educational assistance.

(38 U.S.C. 1434, 1682(g); Pub. L. 98–525)

(h) *Payment for independent study.* The VA shall pay to a veteran, who is pursuing only independent study, educational assistance based on the training time determined in § 21.4272(h) at the rate prescribed in § 21.7136(d) or § 21.7137(b), as appropriate. If the veteran is entitled to supplemental educational assistance, he or she will be paid at the rate prescribed in § 21.7138(c). If a veteran completes his or her course before the designated completion time, his or her award will be recomputed using the actual length of the course. (38 U.S.C. 1434, 1780; Pub. L. 98–525)

(i) *Payment for independent study-resident training.* A veteran who is pursuing independent study-resident training shall be paid based on the training time determined in § 21.7170(g) at the same rate he or she would have been paid had he or she been pursuing resident training. (38 U.S.C. 1415; Pub. L. 98–525)

§ 21.7140. Certifications and release of payments.

(a) *Payments are dependent upon certifications.* An individual must be pursuing a program of education in order to receive payments. To ensure that this is the case the provisions of this paragraph must be met.

(1) The VA will pay educational assistance to a veteran or servicemember only after—

(i) The educational institution has certified his or her enrollment;

(ii) The VA has received from the individual a certification as to his or her actual attendance;

(iii) The VA has received from the educational institution a certification, or an endorsement of the veteran's or servicemember's certificate, that he or she was enrolled in and pursuing a program of education during the period for which payment is to be made; and

(iv) In the case of a veteran or servicemember pursuing a course not leading to a standard college degree, a report from the veteran or servicemember of each day of absence from scheduled attendance. The report will be endorsed by the educational institution. For a discussion of each of these certifications see § 21.7152, and § 21.7154.

(2) Since the VA will permit an individual to certify his or her attendance only once each month, this procedure usually will result in monthly payment of educational assistance.

(38 U.S.C. 1434(b); Pub. L. 98–525)

(b) *Payment for intervals between terms.* (1) In administering 38 U.S.C. ch. 30, the VA will apply the provisions of § 21.4138(f) in the same manner as they are applied in the administration of chapter 34 when determining whether a veteran is entitled to payment for an interval between terms. References to § 21.4205 in § 21.4138(f) shall be deemed to refer to § 21.7136.

(2) The Director of the VA field station of jurisdiction may authorize payment to be made for breaks, including intervals between terms within a certified period of enrollment, during which the educational institution is closed under an established policy based upon an order of the President or due to an emergency situation.

(i) If the Director has authorized payment due to an emergency school closing resulting from a strike by the faculty or staff of the school, and the closing lasts more than 30 days, the Director, Education Service, will decide if payments may be continued. The decision will be based on a full assessment of the strike situation. Further payments will not be authorized if in his or her judgment the school closing will not be temporary.

(ii) An educational institution, which disagrees with a decision made under this subparagraph by a Director of a VA field station, has one year from the date of the letter notifying the educational institution of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the VA field station where the decision was made. The Director, Education Service, shall review the evidence of record and any other pertinent evidence the educational institution may wish to submit. The Director, Education Service, has the authority either to affirm or reverse a decision of the Director of a VA field station.

(3) A veteran, who is pursuing a course leading to a standard college degree, may transfer between consecutive school terms from one approved educational institution to another for the purpose of enrolling in, and pursuing, a similar course at the second educational institution. If the interval between terms does not exceed 30 days, the VA shall, for the purpose of paying educational assistance, consider the veteran to be enrolled in the first educational institution during the interval. (38 U.S.C. 1434, 1780; Pub. L. 98–525)

(c) *Payee.* (1) The VA will make payment to the veteran or servicemember or to a duly appointed fiduciary. The VA will make direct payment to the veteran or servicemember even if he or she is a minor.

(2) The assignment of educational assistance is prohibited. In administering this provision, VA will apply the provisions of § 21.4146 to 38 U.S.C. ch. 30 in the same manner as they are applied in the administration of chapter 34 and 36.

(38 U.S.C. 1434, 1780; Pub. L. 98–525)

(d) *Limitations on payments.* (1) The VA will not pay educational assistance in advance.

(2) The VA will not apportion educational assistance.

(3) The VA will make lump sum payments of educational assistance only in those instances where the veteran's or servicemember's enrollment or attendance is first certified after he or

she completes his or her enrollment period.

(38 U.S.C. 1434, 1780; Pub. L. 98–525)

§ 21.7142 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* An individual, entitled to educational assistance under 38 U.S.C. ch. 34, who establishes eligibility under 38 U.S.C. ch. 30, shall not receive payment under 38 U.S.C. ch. 30 before January 1, 1990. An individual who is eligible for educational assistance under 38 U.S.C. ch. 30 and any of the provisions of law listed in this paragraph must elect which benefit he or she will receive for each program of education he or she wishes to pursue. The provisions of law are:

(1) 38 U.S.C. ch. 31,
(2) 38 U.S.C. ch. 35,
(3) 10 U.S.C. ch. 106, and
(4) 10 U.S.C. ch. 107.

(38 U.S.C. 1433; Pub. L. 98–525)

(b) *Election of benefits.* The veteran must elect in writing which benefit he or she wishes to receive. The veteran may make a new election at any time, but may not elect more than once in a calendar month. (38 U.S.C. 1433; Pub. L. 98–525)

§ 21.7144 Overpayments.

(a) *Prevention of overpayments.* In administering benefits payable under 38 U.S.C. ch. 30, the VA will apply the provisions of § 21.4008 in the same manner as they are applied in the administration of 38 U.S.C. ch. 34. See § 21.7133. (38 U.S.C. 1434, 1790(b); Pub. L. 98–525)

(b) *Liability for overpayments.* (1) The amount of the overpayment of educational assistance paid to a veteran or servicemember constitutes a liability of that veteran or servicemember.

(2) The amount of the overpayment of educational assistance paid to a veteran or servicemember constitutes a liability of the educational institution if the VA determines that the overpayment was made as the result of willful or negligent—

(i) Failure of the educational institution to report, as required by § 21.7140 and § 21.7154, excessive absences from a course by a veteran or servicemember, or

(ii) False certification by the educational institution, or

(iii) Endorsement of a veteran's or servicemember's false certification of his or her actual attendance.

(38 U.S.C. 1434, 1785; Pub. L. 98–525)

(c) *Recovery of overpayments.* In determining whether an overpayment should be recovered from an educational institution, the VA will apply the provisions of § 21.4009 except paragraph (a)(1) to overpayments of educational assistance under 38 U.S.C. ch. 30 in the same manner as they are applied to overpayments of educational assistance allowance under 38 U.S.C. ch. 34. (38 U.S.C. 1434, 1785; Pub. L. 98–525)

Cross-Reference: Entitlement charges. See § 21.7076(c).

Pursuit of Courses

§ 21.7150 Pursuit.

The veteran's or servicemember's educational assistance depends upon his or her pursuit of a program of education. Verification of this pursuit is accomplished by various certifications.

(38 U.S.C. 1434(b); Pub. L. 98–525)

§ 21.7152 Certification of enrollment.

As stated in §21.7140, the educational institution must certify the veteran's or servicemember's enrollment before he or she may receive educational assistance.

(a) *Content of certification of entrance or reentrance.* The certification of entrance or reentrance must clearly specify—

(1) The course;

(2) The starting and ending dates of the enrollment period;

(3) The credit hours or clock hours being pursued by the veteran or servicemember;

(4) The amount of tuition and fees charged to—

(i) The veteran who is training less than one-half time,

(ii) The servicemember,

(iii) The veteran who is pursuing independent study, or

(iv) The veteran who is incarcerated in Federal, State or local prison or jail for conviction of a felony;

(5) The amount charged for books to a veteran or servicemember who is incarcerated in a Federal, State or local prison or jail for conviction of a felony; and

(6) Such other information as the Administrator may find is necessary to determine the veteran's or servicemember's monthly rate of educational assistance.

(38 U.S.C. 1432, 1434, 1682(g), 1780; Pub. L. 98–525)

(b) *Length of the enrollment period covered by the enrollment certification.* (1) Educational institutions organized on a term, quarter or semester basis generally shall report enrollment for the term, quarter, semester, ordinary school year or ordinary school year plus summer term. If the certification covers two or more terms, the educational institution will report the dates for the break between terms if a term ends and the following term does not begin in the same or the next calendar month or if the veteran elects not to be paid for the intervals between terms. The educational institution must submit a separate enrollment certification for each term, quarter or semester when the certification is for—

(i) A servicemember, or

(ii) A verteran who—

(A) Is training on a less than one-half-time basis, or

(B) Is incarcerated in a Federal, State of local prison or jail for conviction of a felony.

(2) Educational institutions organized on a year-round basis will report enrollment for the length of the course. The certification will include a report of the dates during which the educational institution closes for any intervals designated in its approval data as breaks between school years.

(3) When a veteran enrolls in independent study leading to a standard college degree, the educational institution's certification will include—

(i) Enrollment date,

(ii) Established charges for tuition and fees, and

(iii) The ending date for the period being certified. If the educational institution has no prescribed maximum time for completion, the certification must include an ending date based on the educational institution's estimate for completion.

(38 U.S.C. 1434, 1784; Pub. L. 98–525)

§ 21.7153 Progress and conduct.

(a) *Satisfactory pursuit of program.* In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory progress. The VA will discontinue educational assistance if the individual does not maintain satisfactory progress. Progress is unsatisfactory if the individual does not satisfactorily progress according to the regularly prescribed standards of the educational institution he or she is attending. (38 U.S.C. 1434, 1674; Pub. L. 98–525)

(b) *Satisfactory conduct.* In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory conduct according to the regularly prescribed standards and practices of the educational institution in which he or she is enrolled. If the individual will be no longer retained as a student or will not be readmitted as a student by the educational institution in which he or she is enrolled, the VA will discontinue educational assistance, unless further development establishes

that the educational institution's action is retaliatory. (38 U.S.C. 1434, 1674; Pub. L. 98–525)

(c) *Reentrance after discontinuance.* (1) An individual may be reentered following discontinuance because of unsatisfactory conduct or progress only when the following conditions exist:

(i) The cause of unsatisfactory conduct or progress has been removed, and

(ii) The VA determines that the program which the individual now proposes to pursue is suitable to his or her aptitudes, interests and abilities.

(2) Reentrance may be for the same program, for a revised program, or for an entirely different program depending on the cause of the discontinuance and the removal of that cause.

(38 U.S.C. 1434, 1674; Pub. L. 98–525)

§ 21.7154 Pursuit and absences.

As stated in § 21.7140(a) an individual must certify to the VA each month his or her actual attendance during the period for which the individual is to be paid. The educational institution either must endorse the individual's certificate or must separately certify that the individual was enrolled in, and in pursuit of, a program of education during the period being certified.

(a) *Requirements for all veterans and servicemembers.* (1) The monthly certification for all veterans and servicemembers will include a report on the following items when applicable:

(i) Actual attendance,

(ii) Continued enrollment in and pursuit of the course,

(iii) The individual's unsatisfactory conduct or progress,

(iv) Date of interruption or termination of training,

(v) Changes in the number of credit hours or in the number of clock hours of attendance,

(vi) Nonpunitive grades, and

(vii) Any other changes or modifications in the course as certified at enrollment.

(2) The certification of attendance and pursuit must—

(i) Contain the information required for release of payment,

(ii) Be signed by the veteran or servicemember and an official of the educational institution (except that the veteran or servicemember need not sign if he or she has interrupted the enrollment and is not available for signature),

(iii) Be signed on or after the final date of the reporting period, and

(iv) Clearly show the date on which each person signed.

(38 U.S.C. 1434, 1784; Pub. L. 98–525)

(b) *Additional requirements when the course does not lead to a standard college degree.* When the veteran or servicemember is enrolled in a course or courses which do not lead to a standard college degree, he or she must include a report of each day of absence from scheduled attendance. Only those days defined as absences in § 21.7139(a) will be reported. The educational institution will—

(1) Convert partial days of absence to full days of absence as provided in § 21.7139(a).

(2) Verify the full days of absence reported, and

(3) Endorse the report.

(38 U.S.C. 1434, 1780(a); Pub. L. 98–525)

§ 21.7156 Other required reports from educational institutions.

Each veteran or servicemember must report without delay any change in his or her hours of credit or attendance, any change in his or her pursuit and any interruption or termination of his or her attendance. Each educational institution must report without delay the entrance, reentrance, change in hours of credit or attendance, pursuit, interruption and termination of attendance of each veteran or servicemember enrolled in an approved course. The fact that a veteran or servicemember may fail to present his or her monthly certification of attendance and pursuit for endorsement by the educational institution does not relieve the educational institution of its responsibility.

(a) *Interruptions, terminations and changes in hours of credit or attendance.* When a veteran or servicemember interrupts or terminates his or her training for any reason, including unsatisfactory conduct or progress, or when he or she changes the number of hours of credit or attendance, the educational institution must report this fact to the VA.

(1) If the change in status or change in number of hours of credit or attendance occurs on a day other than one indicated by paragraph (a) (2) or (3) of this section, the educational institution will initiate a report of the change in time for the VA to receive it within 30 days of the date on which the change occurs. The educational institution may include the information on the monthly certification of attendance and pursuit.

(2) If the educational institution has certified the veteran's or servicemember's enrollment for more than one term, quarter or semester and the veteran or servicemember interrupts his or her training at the end of a term, quarter or semester within the certified enrollment period, the educational institution shall report the change in status to the VA in time for the VA to receive the report within 30 days of the last officially scheduled registration date for the next term, quarter or semester. The educational institution may use the monthly certification of attendance and pursuit to make this report provided the VA will receive the report within the time period stated in this paragraph.

(3) If the change in status or change in the number of hours of credit or attendance occurs during the 30 days of a drop-add period, the educational institution must report the change in status or change in the number of hours of credit or attendance to the VA in time for the VA to receive the report within 30 days from the last date of the drop-aid period or 60 days from the first day of the enrollment period, whichever occurs first. The educational institution may use the monthly certification of pursuit to make this report provided the VA will receive the report within the time period stated in this paragraph.

(38 U.S.C. 1434, 1784; Pub. L. 98–525)

(b) *Nonpunitive grades.* An educational institution may assign a nonpunitive grade for a course or subject in which the veteran or servicemember is enrolled even though the veteran or eligible person does not withdraw from the course or subject. When this occurs, the educational institution must report the assignment of the nonpunitive grade in time for the VA to receive it before the earlier of the following dates is reached:

(1) Thirty days from the date on which the educational institution assigns the grade, or

(2) Sixty days from the last day of the enrollment period for which the nonpunitive grade is assigned. The educational institution may use monthly certification of attendance and pursuit to report nonpunitive grades provided the VA will receive the report within the time period stated in this paragraph.

(38 U.S.C. 1434, 1784; Pub. L. 98–525)

§ 21.7158 False, late or missing reports.

(a) *Veteran.* Payments may not be based on false or misleading statements, claims or reports. The VA will apply the provisions of §§ 21.4006 and 21.4007 to a veteran or servicemember or any other person who submits false or misleading claims, statements or reports in connection with benefits payable under 38 U.S.C. ch. 30 in the same manner as they are applied to people who make similar false or misleading claims for benefits payable under 38 U.S.C. ch. 34 or 36.

(38 U.S.C. 1434, 1780, 1790, 3503; Pub. L. 98–525)

(b) *Educational institution.* (1) The VA may hold an educational institution liable for overpayments which result from the educational institution's willful or negligent failure to report excessive absences from a course or discontinuance or interruption of a course by a veteran or servicemember or from willful or neglicent false certification by the educational institution. See § 21.7144(b).

(2) When an educational institution willfully and knowingly submits a false report or certification, the VA may disapprove a course for further enrollments and may discontinue educational assistance to veterans and servicemembers already enrolled. The VA will apply the provisions of §§ 21.4202(b), 21.4207 and 21.4208 in the same manner as they are applied in making similar determinations regarding enrollments under 38 U.S.C. ch. 34.

(38 U.S.C. 1434, 1790; Pub. L. 98–525)

§ 21.7159 Reporting fee.

In determining the amount of the reporting fee payable to educational institutions for furnishing required reports, the VA will apply the provisions of § 21.4206 (except paragraph (c)) in the same manner as they are applied in the administration of 38 U.S.C. chs. 34 and 36. (38 U.S.C. 1434, 1784; Pub. L. 98–525)

Course Assessment

§ 21.7170 Course measurement.

In administering benefits payable under 38 U.S.C. ch. 30, the VA shall apply the following sections in the same manner as they are applied for the administration of chapters 34 and 36.

(a) § 21.4270 (except those portions of paragraph (a) and footnotes dealing with high school, cooperative, farm cooperative, apprentice and other on-job training)—Measurement of courses,

(b) § 21.4271 (except paragraph (c))—Trade or technical-high schools,

(c) § 21.4272 (except paragraph (e)(4))—Collegiate course measurement,

(d) § 21.4273—Collegiate graduate,

(e) § 21.4274—Law courses,

(f) § 21.4275—Practical training courses-measurement, and

(g) § 21.4280—Independent study leading to a standard college degree.

(38 U.S.C. 1434, 1788; Pub. L. 98–525)

State Approving Agencies

§ 21.7200 State approving agencies.

State approving agencies have the same general responsibilities for approving courses for training under 38 U.S.C. ch. 30 as they do for approving courses for training under 38 U.S.C. ch. 34. Accordingly, in administering 38 U.S.C. ch. 30, the VA will apply the provisions of the following sections in the same manner, as they are applied for the administration of 38 U.S.C. chs. 34 and 36.

(a) § 21.4150 (except paragraph (e))—Designation,

(b) § 21.4151—Cooperation,

(c) § 21.4152—Control by agencies of the United States,

(d) § 21.4153—Reimbursement of expenses, and

(e) § 21.4154—Report of activities.

(38 U.S.C. 1434, 1770, 1771, 1772, 1773, 1774; Pub. L. 98–525)

Approval of Courses

§ 21.7220 Course approval.

(a) *Courses must be approved.* (1) A course of education, including the class schedules of a resident course not leading to a standard college degree, offered by an educational institution must be approved by—

(i) The State approving agency for the State in which the educational institution is located, or

(ii) The State approving agency which has appropriate approval authority, or

(iii) The VA, where appropriate. In determining when it is appropriate for the VA to approve a course, the VA will apply the provisions of § 21.4250(b)(3) and (c).

(2) A course approved under 38 U.S.C. ch. 36 is approved for the purposes of 38 U.S.C. ch. 30 unless it is one of the types of courses listed in § 21.7222.

(38 U.S.C. 1434, 1772; Pub. L. 98–525)

(b) *Courses approval Criteria.* In administering benefits payable under 38 U.S.C. ch. 30, the VA and, where appropriate, the State approving agencies, shall apply the following sections in the same manner as they are applied for the administration of 38 U.S.C. chs. 34 and 36:

(1) § 21.4250 (except paragraphs (a), (c)(1) and (c)(2)(v))—Approval of courses,

(2) § 21.4251—Period of operation of course,

(3) § 21.4253 (except that portion of paragraph (f)(3) which permits approval of a course leading to a high school diploma)—Accredited courses,

(4) § 21.4254—Nonaccredited courses,

(5) § 21.4225—Refund policy—nonaccredited courses,

(6) § 21.4258 (except paragraph (c))—Notice of approval,

(7) § 21.4259—Suspension or disapproval,

(8) § 21.4260—Courses in foreign countries,

(9) § 21.4265 (except paragraphs (c)(4), (f)(1) and (g))—Practical training approved as institutional training,

(10) § 21.4266—Courses offered at subsidiary branches or extensions.

(38 U.S.C. 1434, 1676, 1772, 1775, 1776, 1778, 1779, 1789, 1789(c); Pub. L. 98–525)

§ 21.7222 Courses and enrollments which may not be approved.

The Administrator may not approve an enrollment by a veteran or servicemember in, and a State approving agency may not approve for training under 38 U.S.C. ch. 30—

(a) A bartending or personality development course;

(b) A flight training course unless the course is offered by an institution of higher learning for credit toward a standard college degree;

(c) A course offered by radio;

(d) A correspondence course;

(e) A course, or combination of courses, consisting of instruction offered by an educational institution alternating with instruction in a business or industrial establishment, commonly called a cooperative course;

(f) A course, or a combination of courses consisting of institutional agricultural courses and concurrent agricultural employment, commonly called a farm cooperative course;

(g) An independent study course which does not lead to a standard college degree;

(h) An apprenticeship or other on-job training; or

(i) A refresher, remedial or deficiency course.

(38 U.S.C. 1434, 1673; Pub. L. 98–525)

Administrative

§ 21.7301 Delegations of authority.

(a) *General delegation of authority.* Except as otherwise provided, authority is delegated to the Chief Benefits Director of the VA, and to supervisory or adjudication personnel within the jurisdiction of the Education Service of the VA designated by him or her, to make findings and decisions under 38 U.S.C. ch. 30 and the applicable regulations, precedents and instructions concerning the program authorized by that chapter. (38 U.S.C. 212(a))

(b) *Other delegations of authority.* In administering benefits payable under 38 U.S.C. ch. 30, the VA shall apply § 21.4001 (b), (c) (1) and (2) and (f) in the same manner as those paragraphs are applied in the administration of 38 U.S.C. ch. 34. (38 U.S.C. 212(a), 1434, 1796; Pub. L. 98–525)

§ 21.7302 Finality of decisions.

(a) *Agency decisions generally are binding.* The decision of a VA field station of original jurisdiction on which an action is based—

(1) Will be final,

(2) Will be binding upon all field offices of the VA as to conclusions based on evidence on file at that time, and

(3) Will not be subject to revision on the same factual grounds except by duly constituted appellate authorities or except as provided in § 21.7303. (See §§ 19.192 and 19.193 of this chapter).

(38 U.S.C. 211)

(b) *Decisions of an activity within the VA.* Current determinations of line of duty and other pertinent elements of eligibility for a program of education made by either an Adjudicative activity or an Insurance activity by application of the same criteria and based on the same facts are binding one upon the other in the absence of clear and unmistakable error. (38 U.S.C. 211)

(c) *Character of discharge determinations.* (1) A determination of the character of a veteran's discharge made by a competent military or naval authority or by the Coast Guard is binding upon the VA.

(2) Any determination of the character of a veteran's discharge made by the VA in connection with the veteran's eligibility for a benefit other than educational assistance under 38 U.S.C. ch. 30, shall not affect his or her eligibility for educational assistance.

(38 U.S.C. 1411(a), 1412(a); Pub. L. 98–525)

§ 21.7303 Revision of decisions.

The revision of a decision on which an action was predicated is subject to the following sections:

(a) Clear and unmistakable error, § 3.105(a) of this chapter; and

(b) Difference of opinion, § 3.105(b) of this chapter.

(38 U.S.C. 211; Pub. L. 98–525)

§ 21.7305 Conflicting interests.

In administering benefits payable under (38 U.S.C. ch. 30, the VA will apply the provisions of § 21.4005 in the same manner as they are applied in the administration of 38 U.S.C. ch. 34. (38 U.S.C. 1434, 1783; Pub. L. 98–525)

§ 21.7307 Examination of records.

In administering benefits payable under 38 U.S.C. ch. 34, the VA will apply the provisions of § 21.4209 in the same manner as they are applied in the administration of 38 U.S.C. chs. 30 and 36. (38 U.S.C. 1434, 1790; Pub. L. 98–525)

§ 21.7310 Civil rights.

(a) *Delegations of authority concerning Federal equal opportunity laws.* (1) The Chief Benefits Director is delegated the responsibility to obtain evidence of voluntary compliance with Federal equal opportunity laws from educational institutions and from recognized national organizations whose representatives are afforded space and office facilities under his or her jurisdiction. See § 18.1 et seq. of this chapter. These equal opportunity laws are:

(i) Title VI, Civil Rights Act of 1964,

(ii) Title IX, Education Amendments of 1972, as amended,

(iii) Section 504, Rehabilitation Act of 1973, and

(iv) The Age Discrimination Act of 1975.

(2) In obtaining evidence from educational institutions of compliance with Federal equal opportunity laws, the Chief Benefits Director may use the State approving agencies as provided in § 21.4258(d).

(42 U.S.C. 2000)

(b) *Nondiscrimination in educational programs.* In administering benefits payable under 38 U.S.C. ch. 30, the VA shall apply the following sections in the same manner as they are applied to the administration of 38 U.S.C. chs. 34 and 36:

(1) § 21.4300—Civil rights assurances—Title VI, Public Law 88–352,

(2) § 21.4301—Institutions of higher learning; elementary and secondary schools; medical institutions,

(3) § 21.4302 (with the exception of the reference to training establishments)—Proprietary vocational schools and training establishments,

(4) § 21.4304 (with the exception of references to elementary and secondary schools)—Assurance of compliance received—i.h.l.'s; elementary and secondary schools; medical facilities,

(5) § 21.4305—Noncompliance—complaints—initial action,

(6) § 21.4306—Payments after final agency action, and

(7) § 21.4307—Posttermination compliance.

(42 U.S.C. 2000)

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Part V

Environmental Protection Agency

40 CFR Part 260 et al.

Land Disposal Restrictions for Certain "California List" Hazardous Wastes and Modifications to the Framework; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 268, 270, and 271

[SWH-FRL-3219-1]

Land Disposal Restrictions for Certain "California List" Hazardous Wastes and Modifications to the Framework

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today promulgating regulations restricting land disposal of certain "California list" wastes: liquid hazardous wastes containing polychlorinated biphenyls (PCBs) above specified concentrations; and hazardous wastes containing halogenated organic compounds (HOCs) above specified concentrations. In addition, today's final rule codifies the statutory land disposal prohibitions on certain California list corrosive wastes. This action also establishes methods for determining compliance with the prohibitions and modifies portions of the land disposal restrictions framework which was promulgated on November 7, 1986 (51 FR 40572).

EPA is taking this action in response to the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), which requires EPA to restrict the land disposal of hazardous wastes containing the California list constituents above specified concentrations. Today's rule does not establish regulations for the California list wastes containing metals or free cyanides beyond requirements set forth in the statute. EPA may establish more stringent requirements for these wastes in a separate rulemaking.

Today's rule, however, does address the Agency's approach to determining compliance with the statutory prohibitions on the metal-bearing and free cyanide containing wastes.

EFFECTIVE DATE: This final rule is effective July 8, 1987.

ADDRESSES: The official record for this rulemaking is identified as Docket Number LDR-4 and is located in the EPA RCRA Docket Room (sub-basement) 401 M Street, SW., Washington, DC 20460. The docket is open from 9:00 to 4:00 Monday through Friday, except for public holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. The public may copy a maximum of 50 pages from any regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424-9346 (toll-free) or (202) 382-3000 locally.

For information on specific aspects of this final rule contact: Gary A. Jonesi or Jacqueline W. Sales, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Background

A. Summary of Hazardous and Solid Waste Amendments of 1984

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, prohibit the continued land disposal of hazardous wastes beyond specified dates unless the Administrator determines, based on a case-specific petition, that there will be "no migration" of hazardous

constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. Wastes treated in accordance with the treatment standards set by EPA pursuant to RCRA section 3004(m) are not subject to the prohibitions and may be land disposed. The land disposal prohibitions are effective immediately upon promulgation unless the Agency sets another effective date based on the earliest date that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment will be available. The relevant statutory deadlines are as follows:

1. Scheduled Wastes and Newly Listed Wastes

On May 28, 1986 (51 FR 19300), EPA promulgated a schedule for making land disposal restrictions decisions for all hazardous wastes listed or identified by characteristic as of November 8, 1984, excluding solvent and dioxin wastes and the California list wastes which are subject to a statutory schedule. If EPA fails to set treatment standards or grant a "no migration" petition for any of the scheduled wastes by May 8, 1990, all such wastes will be prohibited from land disposal. (Hazardous wastes containing California List constituents are prohibited from land disposal at concentrations which exceed the statutory levels.)

For any hazardous waste identified or listed after November 8, 1984, EPA is required to make a land disposal restriction determination within 6 months of the date of identification or listing. However, there is no automatic prohibition on land disposal if EPA misses a deadline for any newly listed or identified waste.

2. Solvents and Dioxins

On November 7, 1986, EPA promulgated a final rule that established a framework for implementing the congressionally mandated land disposal prohibitions (51 FR 40572). The rule established procedures for establishing treatment standards, for granting nationwide variances from statutory effective dates, for granting extensions of effective dates on a case-by-case basis, for evaluating petitions allowing variances from the treatment standard, and for evaluating petitions demonstrating that continued land disposal is protective of human health and the environment. In addition, the November 7, 1986 final rule established treatment standards and effective dates for wastes included in the first phase of the land disposal prohibitions: certain solvent-containing and dioxin-containing hazardous wastes.

3. California List

Today's rule addresses the second phase of the land disposal restrictions i.e., the California list wastes. The California list consists of liquid hazardous wastes containing certain metals, free cyanides, polychlorinated biphenyls (PCBs), corrosives with a pH of less than or equal to two (2.0), and liquid and nonliquid hazardous wastes containing halogenated organic compounds (HOCs) as described below:

(A) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/1.

(B) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below:

(i) Arsenic and/or compounds (as As) 500 mg/1;

(ii) Cadmium and/or compounds (as Cd) 100 mg/1;

(iii) Chromium (VI and/or compounds (as Cr VI)) 500 mg/1;

(iv) Lead and/or compounds (as Pb) 500 mg/1;

(v) Mercury and/or compounds (as Hg) 20 mg/1;

(vi) Nickel and/or compounds (as Ni) 134 mg/1;

(vii) Selenium and/or compounds (as Se) 100 mg/1; and

(viii) Thallium and/or compounds (as T1) 130 mg/1;

(C) Liquid hazardous waste having a pH less than or equal to two (2.0).

(D) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 50 ppm.

(E) Hazardous wastes containing halogenated organic compounds in total concentration greater than or equal to 1,000 mg/kg.

Collectively, these hazardous wastes are referred to as the California list because the State of California developed regulations to restrict the land disposal of hazardous wastes containing these constituents, and Congress subsequently incorporated these prohibitions into the 1984 Amendments to RCRA. (RCRA sections 3004(d) (1) and (2), 42 U.S.C. 6924(d) (1), and (2)). Congress intended the California list prohibitions as a starting point in carrying out the congressional mandate to minimize land disposal of hazardous waste. Congress' intent in specifying threshold levels for the land disposal of California list wastes was to avoid time-consuming litigation over the selection of appropriate levels. However, section 3004(d)(2) of RCRA directs the Agency to substitute more stringent concentration levels where necessary to protect human health and the environment.

B. Summary of Proposed Rule

1. Prohibition Levels

On December 11, 1986 (51 FR 44714), the Agency proposed to codify the statutory levels for all of the California list as set forth in RCRA section 3004(d). The Agency requested comments on an alternative approach that would substitute more stringent concentration levels for those California list metals for which Extraction Procedure (EP) toxicity characteristic levels exist. The Agency also requested comment on whether the prohibition levels should be lowered for the remaining metals for which EP levels have not been established.

2. Applicability

The Agency proposed to require use of the Paint Filter Liquids Test (PFLT) in determining whether a waste is considered to be a liquid or a nonliquid for purposes of the California list prohibitions. For purposes of determining whether a liquid waste exceeds the applicable prohibition levels, EPA proposed to require that the regulated community analyze both the free liquid portion of the waste and the residual solids remaining in the paint filter using the Toxicity Characteristic Leaching Procedure (TCLP). The Agency also proposed to define the universe of prohibited HOCs as those constituents listed as a hazardous constituent under Appendix VIII to Part 261. Finally, the Agency also proposed to apply the statutory level for cyanides (1,000 mg/1) to total cyanide rather than free cyanide because of the lack of a precise definition of free cyanide and because complexed cyanide may convert to free cyanide under certain conditions that may exist in the environment.

3. Treatment Standards and Effective Dates

In the proposed rule, the Agency established treatment standards expressed as specified technologies for the prohibited liquid hazardous wastes containing PCBs and for the prohibited liquid and nonliquid hazardous wastes containing HOCs (except for dilute HOC wastewaters). The proposed treatment standard for the PCB containing wastes was thermal destruction in accordance with the technical standards required by regulations promulgated pursuant to the

Toxic Substances Control Act (TSCA). The Agency proposed to establish a two-year nationwide variance for these wastes. Incineration in accordance with existing RCRA regulations was proposed as the treatment standard for most HOCs. However, based on a lack of incineration capacity, the Agency proposed a two-year nationwide variance from the prohibition effective date for these HOC wastes. The Agency also proposed a performance based treatment standard for corrosives wastes having a pH less than or equal to two (2.0). The Agency did not propose required treatment standards for the remaining California list wastes; however, applicable technologies generally capable of meeting the statutory prohibition levels were discussed in the proposal.

4. Modifications to the Land Disposal Restrictions Regulatory Framework

EPA also proposed to modify portions of the land disposal restrictions framework established in the November 7, 1986 final rule. These proposed changes would apply to all wastes subject to the land disposal restrictions. Among them was a proposal to strengthen the dilution prohibition by amending § 268.3 to prohibit dilution as a means of achieving the prohibition levels or as a means of circumventing the effective date of a land disposal prohibition. The Agency also proposed a prohibition on evaporation of hazardous constituents for purposes of obtaining an exemption under § 268.4 which provision allows otherwise prohibited wastes to be treated in surface impoundments without the wastes first being treated to the section 3004(m) standards.

The Agency also proposed to amend Part 270 to provide more flexibility in handling restricted wastes by allowing permitted facilities to use the minor modification process to change their operations and treat or store restricted wastes in tanks or containers, subject to certain enumerated conditions. The Agency further proposed that the so-called reconstruction ban in § 270.72(e) not apply to interim status facilities adding treatment or storage capacity (also in tanks or containers) to comply with the land disposal restrictions.

C. Summary of Today's Final Rule

1. Applicability

Today the Agency is promulgating land disposal prohibitions and effective dates for liquid hazardous wastes containing PCBs at concentrations greater than or equal to 50 ppm (California list PCBs) and other liquid and nonliquid hazardous wastes containing HOCs in total concentration greater than or equal to 1,000 mg/kg (California list HOCs). In addition, EPA is establishing treatment standards expressed as specified technologies for these PCB and HOC wastes (except for dilute HOC wastewaters). EPA is also codifying the statutory prohibition on land disposal of liquid hazardous wastes with a pH less than or equal to two (2.0) (California list corrosives).

Today's final rule does not establish prohibition levels, treatment standards, or effective dates for the California list liquid hazardous wastes containing metals or free cyanides. Rather, EPA is publishing a notice of data availability and request for comment which outlines the Agency's findings with respect to establishing more stringent prohibition levels. Since a final decision as to more stringent land disposal prohibitions for these wastes will be contained in a separate notice, most comments on metals and free cyanide issues received in response to the December 11, 1986 proposal will be addressed in that final rule. The California list metals and free cyanides are only addressed in today's final rule for purposes of explaining the Agency's approach to demonstrating compliance with the statutory prohibitions which automatically become effective on July 8, 1987, and for purposes of determining if the statutory prohibition date shall be immediately effective or whether national capacity variances shall be granted.

The California list PCB and HOC wastes that are not subject to a national capacity variance are prohibited from land disposal unless the wastes comply with the applicable treatment standards (including potential alternative standards granted pursuant to § 268.42(b)), a "no migration" petition has been granted by the Administrator pursuant to § 268.6, a case-by-case capacity variance has been granted pursuant to § 268.5, or the wastes are treated in an impoundment which is exempt from land disposal prohibitions under § 268.4.

The California list corrosives, metal-bearing wastes, and free cyanide wastes are prohibited from land disposal on July 8, 1987, unless a "no migration" petition has been granted by the Administrator under § 268.6, or the Administrator grants a case-by-case capacity variance under § 268.5. In complying with these prohibitions, the regulatory framework promulgated on November 7, 1986 (51 FR 40572) is applicable. Unless otherwise specified in today's rule, the Part 268 (e.g., § 268.7 tracking, notification and certification) and related RCRA Subtitle C requirements (e.g., § 264.13 and § 265.13 waste analysis requirements) are applicable to all of the California list wastes, including the metal and free cyanide containing wastes.

Where treatment standards and prohibitions effective dates are promulgated for California list waste constituents that are also covered under the November 7, 1986 solvents and dioxins final rule, the constituent-specific treatment standards and effective dates promulgated on November 7, 1986 apply. For example, HOC-containing wastes that are also covered by the F001 or F002 spent solvent listings are prohibited from land disposal according to the effective date specified on November 7, 1986 and must be treated to the levels specified in that final rule (or meet those levels as generated). They need not be incinerated in order to reach such levels. (This example assumes that the waste does not exceed the California list prohibitions levels for any constituent but HOCs. See section III. G. below.)

2. Testing Requirements

Today's rule requires that the Paint Filter Liquids Test (PFLT) be used to determine whether a waste, including a free cyanide or metal-bearing waste, is considered to be a liquid or nonliquid waste for purposes of the California list land disposal restrictions. The procedure is method 9095 in EPA Publication No. SW-846, "Test Methods for Evaluating Solid Waste."

The Agency proposed to determine whether a waste is a liquid, and thus potentially subject to the California list land disposal restrictions, at the point of disposal. However, today's final rule departs from the proposal and clarifies EPA's position that wastes (both California list wastes and other wastes restricted under RCRA section 3004) are considered to be prohibited at the point of generation, as described in more detail in the "Scope and Applicability" section of today's preamble.

To determine whether a waste meets the specified prohibition levels, the Agency is departing from the proposed rule which stated that an extract generated using the Toxicity Characteristic Leaching Procedure (TCLP) would be tested. Today's final rule requires a total constituent analysis when testing liquid wastes containing PCBs or liquid or nonliquid wastes containing other HOCs. This approach requires that the entire waste sample be analyzed for the constituents of concern. Today's rule also states that when testing liquid hazardous wastes to

evaluate whether they have a pH less than or equal to two (2.0), the existing method for determining the characteristic of corrosivity in § 261.22(a)(1) is required.

In determining compliance with the statutory prohibition levels for metals and free cyanides, EPA will be evaluating whether the filtrate generated from the Paint Filter Liquids Test contains the prohibited constituents in concentrations exceeding the specified levels. The literal sense of the statutory language "liquid hazardous waste, including free liquids associated with any solid or sludge" is that the free cyanide and metal containing waste bans applies when the true aqueous portions of the wastes contain concentrations exceeding the statutory levels. Further, the HOC wastes are prohibited when "total concentration(s)" exceed the statutory levels. The absence of any reference to total concentrations in the metal and cyanide waste provisions strongly suggests a difference in regulatory approach. EPA thus disagrees with those commenters who claimed that a total constituent analysis of the metal and cyanide wastes is mandated.

Consistent with the framework established on November 7, 1986, generators may determine whether their wastes are restricted based on knowledge of the waste pursuant to § 268.7.

3. Halogenated Organic Compounds (HOCs)

The Agency is promulgating the definition of HOCs as proposed (i.e., as a compound containing a carbon-halogen bond), but is modifying the proposed limitation on those HOCs subject to the California list restrictions. Only those HOCs that are listed on a new Appendix III to Part 268 are included within the regulatory definition. In limiting the universe of HOCs subject to today's final rule, the Agency is clarifying that polymeric materials such as polyvinyl chlorides (PVCs) are not HOCs within the scope of the HOC land disposal restrictions because they are not listed on Appendix III.

4. Treatment Standards and Effective Dates

a. *HOCs.* Pursuant to today's final rule, all liquid and nonliquid hazardous wastes containing HOCs in total concentration greater than or equal to 1,000 mg/kg except dilute HOC wastewaters (i.e., HOC-water mixtures containing primarily water and which contain less than 10,000 mg/l HOCs) must be incinerated in accordance with existing RCRA regulations. However, EPA has determined that there is a nationwide lack of such incineration capacity and, therefore, is promulgating a 2-year variance from these treatment standards. HOC wastewaters need not be incinerated but they must be treated to the 1,000 mg/l prohibition level. Because the Agency is unable to determine that there is insufficient treatment capacity for these wastewaters, they are not subject to the 2-year variance. Such wastewaters are prohibited as of July 8, 1987, unless those wastewaters are also F001–F005 spent solvent wastewaters granted a 2-year variance in the November 7, 1986 final rule. HOC wastewaters regulated as hazardous because they contain such listed solvent hazardous wastes remain exempt from the treatment requirements until November 8, 1988.

b. *PCBs.* Liquid hazardous wastes containing PCBs at concentrations greater than or equal to 50 ppm must be treated in accordance with existing TSCA thermal treatment regulations at 40 CFR Part 761. EPA proposed to grant a 2-year variance from the July 8, 1987 prohibition effective date for these wastes due to a perceived lack of incineration capacity. However, today's final rule does not grant such a variance.

Although the treatment standards applicable to the California list PCB and HOC wastes are expressed as specified technologies which must be used, alternative treatment methods (e.g., chemical dechlorination of PCBs) may also be utilized provided the Administrator finds that a petitioner's method can achieve a measure of performance equivalent to the method specified by EPA and certain other requirements under § 268.42 are met.

5. Prohibition on Dilution and Evaporation

As proposed, today's rule strengthens the existing prohibition on dilution of restricted wastes by amending § 268.3 to include a prohibition on dilution as a means of avoiding the land disposal restrictions. Thus, dilution of wastes to concentrations below the applicable levels is prohibited, as is dilution to circumvent the effective date of a prohibition on land disposal. Today's final rule also prohibits evaporation of hazardous constituents as the principal means of treatment for purposes of obtaining an exemption under § 268.4, which provision allows treatment of otherwise prohibited wastes in surface impoundments.

6. Permit Modifications and Changes During Interim Status

As proposed, today's final rule allows permitted facilities to use the minor modification process, under certain conditions, to obtain approval to change their facilities to treat or store restricted wastes in tanks or containers as necessary to comply with the land disposal restrictions. Also, today's final rule allows interim status facilities to expand their operations by more than 50 percent, in terms of capital expenditures, to treat or store restricted wastes in tanks or containers as necessary to comply with the land disposal restrictions.

D. Rationale for Immediate Effective Date

Today's rule is effective on July 8, 1987. Absent any regulatory action by EPA, the California list land disposal restrictions in section 3004(d) take effect automatically on July 8, 1987; thus, this is the latest date for EPA to promulgate regulations that will prevent the "hammer" in section 3004(d) from falling. Section 3004(h) of RCRA provides that regulations promulgated under sections 3004(d), (e), (f), or (g) take effect immediately. Moreover, section 3004(m) provides that regulations setting treatment standards must have the same effective date as the applicable regulation promulgated under sections 3004(d), (e), (f), or (g). Therefore, since the statute clearly provides that the regulations implementing section 3004(d) go into effect on July 8, 1987, EPA finds that good cause exists under RCRA section 3010(b)(3) to provide for an immediate effective date. For the same reasons, EPA finds that good cause exists under 5 U.S.C. section 553(d)(3) to waive the requirement that regulations be published at least 30 days before they become effective.

In addition, EPA is promulgating rules establishing an administrative framework for implementing the prohibitions and interpreting certain statutory terms (such as "liquid", "halogenated organic compound", etc.). These rules are a necessary adjunct to the prohibitions which take effect immediately by operation of law, and so it would be impractical for the Agency to delay their effectiveness. Good cause thus exists to make them effective immediately. In the alternative, many of these provisions could be viewed as interpretive rules, and so may take effect immediately.

II. Scope and Applicability

A. RCRA Section 3004(d) Requirements

The RCRA section 3004(d) provisions prohibit the land disposal of hazardous wastes containing California list constituents above specified concentrations. With the exception of HOCs, the restricted wastes must be liquids. In order to be subject to the section 3004(d) provisions, a given waste must meet each of the four criteria discussed in this section: (1) The waste must contain a constituent specified in the California list provisions or have a pH less than or equal to two (2.0) (see section 3004(d)); (2) the physical form of the waste must be a liquid (except for HOCs); (3) the waste containing the California list constituent must be listed or identified as hazardous under RCRA section 3001 (as implemented in 40 CFR Part 261); and (4) the waste must contain a concentration of one or more California list constituents at or above the levels specified in section 3004(d).

1. Definition of California List Constituents

The Agency proposed to define cyanides as any substance that can be shown as having a resonance structure containing a carbon-nitrogen triple bond. There were numerous comments as to the proposed definition of prohibited cyanides and EPA has modified its approach as a result to apply more clearly to the free cyanides in the waste.

The California list metals are easily defined with reference to the periodic table of elements. This requirement applies both to individual constituents and to the relevant metal portion of any compounds containing California list metals.

The Agency proposed that wastes having a pH less than or equal to two (2.0) are to be determined using the method specified for determining the characteristic of corrosivity at 40 CFR 261.22(a)(1). No commenters addressed this issue; therefore, EPA is promulgating this definition as proposed in order to maintain consistency with the existing definition.

The proposed definition of PCBs is consistent with the existing definition in the PCB regulations promulgated under the Toxic Substances Control Act (TSCA). Although one commenter suggested an alternative definition, the Agency does not believe that it is consistent with congressional intent. Therefore, the proposed definition is being promulgated in today's final rule.

EPA proposed to define the universe of prohibited HOCs as any compound that contains a carbon-halogen bond and is listed as a hazardous constituent in 40 CFR Part 261, Appendix VIII. The comments generally supported this approach; however, concern was expressed over the open-ended nature of Appendix VIII and the availability of test methods for all constituents on Appendix VIII. In response to these comments, the Agency has slightly modified its definition of HOCs for purposes of today's final rule.

More detailed definitions of corrosive wastes, and wastes containing cyanides, PCBs, or HOCs are provided later in the preamble sections addressing those constituents.

2. Physical Form Requirement

Except for HOCs (which are prohibited from land disposal in both liquid and nonliquid form), RCRA section 3004(d) prohibits the land disposal of California list wastes only if such wastes exist in liquid form.[1] For purposes of determining whether a given waste is a liquid, the Agency proposed to require use of the Paint Filter Liquids Test (Method 9095 in EPA Publication SW-846). On April 30, 1985 (50 FR 18370), EPA promulgated a final rule requiring use of the Paint Filter Liquids Test in determining whether a waste sample contains free liquids. The Paint Filter Liquids Test is described in detail in both the April 30, 1985 **Federal Register** notice and in the background document for the December 11, 1986 proposed rule. Basically, the method consists of placing a predetermined amount of the waste in a paint filter. If any portion of the waste passes through the filter within five minutes, the waste is deemed to contain free liquids. For purposes of the California list proposal, it would also be considered a liquid waste.

Commenters unanimously supported use of the test; therefore, today's final rule requires use of the Paint Filter Liquids Test to determine whether wastes, including the metal-bearing and cyanide wastes subject to the automatic statutory prohibitions, are liquids for purposes of the California list prohibitions. EPA is clarifying that once a waste is determined to be a liquid, the entire waste is prohibited (provided the concentration of California list constituents in the filtrate, or, for PCBs and HOCs, the entire waste, exceeds the applicable levels), not just the liquid portion. The Paint Filter Liquids Test thus determines whether wastes are liquids for purposes of the California list prohibitions, but not what portion of the waste is prohibited.

3. Hazardous Waste Requirement

RCRA section 3004(d)(2) states that the California list land disposal prohibition "applies to the following hazardous wastes listed or identified under section 3001." This section covers any wastes which are either listed as hazardous under 40 CFR Part 261 or exhibit one or more of the characteristics of hazardous waste identified in Part 261 (i.e. ignitability, corrosivity, reactivity, or EP toxicity), and which also contain a California list constituent. Since PCBs are not currently regulated as hazardous under RCRA, they would have to be mixed with or contained in a RCRA hazardous waste or otherwise be contained in a waste that exhibits a characteristic in order to be subject to the California list prohibitions.

4. Concentration Levels Prohibited From Land Disposal

The California list prohibitions in RCRA section 3004(d) establish certain concentration levels above which there is a strong statutory presumption against land disposal. After the effective date of the prohibitions, the only circumstances in which such wastes may be land disposed in concentrations above the levels specified in section 3004(d) are those cases: (a) For the California list metal and free cyanide containing wastes and corrosive wastes, where the waste has been treated and rendered nonliquid; (b) for the California list PCB wastes, where the waste has been treated by the specified technologies or is subject to a variance from the treatment requirements of § 268.42(b); or (c) for any of these wastes where a petition has been granted pursuant to the § 268.6 "no migration" standards adopted on November 7, 1986 (51 FR 40640).

a. *Codifying the statutory prohibition levels.* HSWA specifies allowable concentration levels for each of the California list constituents; however, the statute and legislative history give EPA both the authority and flexibility to establish more stringent concentration levels. Although EPA is codifying the statutory prohibition levels for the California list corrosives and the California list wastes containing HOCs and PCBs, hazardous wastes that are corrosive or contain these constituents

[1] EPA will address the solid phase of many of the California list wastes at later dates in accordance with the schedule finalized on May 28, 1986 (51 FR 19300). Listed wastes containing metals in a solid matrix will be addressed pursuant to the various time frames in the final schedule and nonliquid wastes identified by characteristic will be addressed no later than May 8, 1990, in accordance with the provisions in RCRA section 3004(g)(4) and the final schedule.

(except for PCBs, which are not currently regulated as hazardous wastes under RCRA unless they are otherwise contained in hazardous wastes) will be reevaluated according to the Agency's final schedule for promulgating land disposal restrictions (51 FR 19300).

The California list metal and cyanide wastes are being addressed in a separate final rule because the Agency currently is compiling and evaluating data which may indicate that more stringent prohibition levels are necessary to protect human health and the environment. A separate notice of data availability and request for comments will outline EPA's basis for lowering the prohibition levels and establishing treatment standards. As will be discussed more fully in that notice, the Agency is considering promulgating prohibitions on the California list metal and cyanide wastes at levels 100 times existing drinking water standards. Similarly, treatment standards that would be promulgated in the next several months (concurrent with such lower levels) will serve as an interim measure until EPA reevaluates these wastes according to the May 28, 1986 final schedule.

b. *Determination of whether wastes exceed the concentration levels.* Having codified the PCB, HOC, and corrosives statutory prohibition levels, EPA must specify a method for determining whether a waste as generated equals or exceeds these levels. Using the Paint Filter Liquids Test to determine whether or not a waste is a liquid results in a filtrate (the liquid that comes through the filter) and, in many cases, a residue that is left behind. The California list constituents may be contained in the filtrate, entrained in the matrix of the solid residue left on the filter, or may be partitioned between the two phases. Because of this possible partitioning, the Agency considered several approaches as to which part or parts of the wastes should be analyzed in order to determine if the concentration of California list constituents is greater than or equal to the statutory prohibition levels.

The Agency received numerous comments on this issue, many of which were critical of requiring use of the Toxicity Characteristic Leaching Procedure (TCLP) in determining the applicable concentration level. Among the criticisms were comments that the TCLP was inappropriate for use on HOCs in light of statutory language prohibiting HOCs in "total concentration", and comments that the PCB regulations under TSCA require what is in effect a total constituent analysis. For these and other reasons discussed later in today's preamble, EPA is requiring that a total constituent analysis be performed on the liquid hazardous wastes containing PCBs as well as the nonliquid hazardous wastes containing HOCs.

For the liquid hazardous wastes containing free cyanides or the specified metals, EPA is requiring that only the filtrate generated from the Paint Filter Liquids Test be tested in order to determine the applicable statutory concentration levels. Thus, the Agency reads section 3004(d) as applying only when the liquid portion of a waste (which includes the free liquids which partition in the Paint Filter Liquids Test) contains concentrations of the specified metals and free cyanides in excess of the statutory levels. When testing the relevant portions of these wastes, EPA is recommending use of the applicable methods in "Test Methods for Evaluating Solid Waste: Physical/ Chemical Methods", EPA Publication No. SW-846, 3d ed., November, 1986.

As in the November 7, 1986, final rule, generators may also determine whether their wastes are restricted using knowledge of the waste. However, a correction notice published in the June 4, 1987, **Federal Register** (52 FR 21010) clarifies that in such cases the generator must maintain all supporting data used to make such a determination on-site in the generator's files.

B. Determination of When California List Wastes Are Restricted

1. Rationale for Changing from Proposed Point of Disposal Approach

In the proposed rule, EPA stated that California list wastes are determined to be liquids at the point of disposal. While noting that this approach deviates from the November 7, 1986 solvents and dioxins rule (51 FR 40620) which requires that wastes are determined to be restricted at the point of generation, EPA stated that the proposed approach is consistent with congressional concerns about the land disposal of the California list constituents in their liquid or mobile form. Except for the HOC wastes, which are prohibited in both liquid and nonliquid form, the statutory prohibitions apply only to liquid hazardous wastes. Therefore, EPA proposed to allow liquid California list wastes to be treated (e.g., by solidification) at any point, so as to render the waste a nonliquid, and subsequently eligible for land disposal.

EPA continues to believe that Congress' primary goal in enacting the California list prohibitions was to eliminate the land disposal of highly toxic liquid hazardous wastes as a starting point; however, as the Agency noted in a recent notice of data availability and request for comment (52 FR 22356, June 11, 1987), the Agency agrees with the commenter who stated that determining whether these wastes are restricted at the point of disposal is not what Congress intended. The legislative history regarding dilution indicates that Congress intended hazardous wastes, including the California list wastes, to be restricted at the point of generation. (*See e.g.,* H.R. Rep. No. 198, Part I, 98th Cong., 1st Sess. 34-35 (1983).)

Furthermore, a point of disposal approach is inconsistent with the Agency's stated concerns regarding the dilution of California list wastes because the amended dilution language in § 268.3 only applies to restricted wastes. If a waste is not considered to be restricted until the point of disposal, then, by definition, it is not subject to any of the land disposal restriction regulations prior to that time, including the dilution prohibition. This is clearly not what Congress or EPA intended. A point of disposal approach likewise undermines the congressional directive that where the Agency specifies section 3004(m) pretreatment standards, wastes may be land disposed only after being pretreated in accord with those standards (i.e., by a specified method or to a specified level).

The Agency recognizes that it can be argued that the California list statutory language is jurisdictional, i.e., that hazardous wastes which do not fall within the scope of the California list language in section 3004(d) are not prohibited. One commenter made a similar argument that because wastes are only prohibited by statute when land disposed, any determination of their regulatory status must be made at the point of disposal. EPA does not view the section 3004(d) language as jurisdictional (past the point of generation) because such a reading renders the section 3004(m) standards mandated for such wastes, as well as the dilution prohibition, virtually meaningless.

However, the question of whether the section 3004(d) language is jurisdictional is essentially an academic one since the Agency possesses independent authority under RCRA section 3004(g) to require that these wastes be pretreated by specified methods or to specified levels. In essence, EPA could simply prohibit land disposal of certain of the section 3004(g) wastes on an accelerated timetable. This reduces the debate to a matter of semantics (i.e., characterizing

the rule as a section 3004(d) or a section 3004(g) rule), and in such circumstances the Agency has great latitude in choosing the means by which to proceed. *See e.g., CMA v. NRDC,* 105 S. Ct. 1102, 1111 (1985). For these reasons, therefore, EPA finds unpersuasive the notion that the California list statutory language is a jurisdictional bar requiring prohibition determinations to be made only at the point of disposal.

2. Final Approach

Having determined not to use a point of disposal approach, EPA is clarifying in today's rule when wastes are considered "prohibited," both for purposes of the California list restrictions and within the remainder of the land disposal restrictions framework.

Today's final rule indicates that "initial generators" of hazardous wastes must determine whether their wastes are prohibited. In interpreting this language to determine at what particular point generators are to make this determination, the Agency has considered two principal options. These are: (1) At the point of generation (see 51 FR at 40620 (Nov. 7, 1986), 51 FR 44727 (Dec. 11, 1986) (raising the issue)); or (2) at the point of common aggregation preceding centralized treatment (52 FR 22356 (June 11, 1987)). In this last-mentioned notice, EPA advanced as reasons for interpreting the rules to use a point of aggregation approach the feasibility of sampling wastes in enclosed systems such as pipes or process vessels, plus the fact that aggregation in many cases is a legitimate and necessary step in centralized treatment processes.

Commenters to the June 11, 1987 notice pointed out, however, the severe practical difficulties of determining a precise point of legitimate aggregation. Commenters also raised the issue that a point of aggregation approach could result in less treatment of concentrated waste streams, or could in some cases lead to impermissible dilution.

Upon reconsideration, EPA has decided to adhere to the interpretation from the November 7, 1986 rules that initial generators are to determine if their hazardous wastes are prohibited at the point of generation. 51 FR 44620. In the first place, the implementation difficulties with a point of aggregation approach are considerable, and could only be solved on a case-by-case basis, raising the possibility of uncertainty and inconsistent determinations. The point of generation is easier to demarcate, and, indeed, EPA's rules on when a waste is hazardous already use this test. *See* § 261.3 (b)(1) and (b)(3). The Agency sees no compelling reason to deviate from this long-standing regulatory requirement.

Perhaps more important is the need to avoid the possibility of compromising applicable treatment standards. For example, if a generator generates four solvent-bearing wastestreams, one an organic liquid containing greater than 10,000 ppm prohibited solvent, and the other three containing less than 10,000 ppm solvents, it was the Agency's intention (and existing rules require) that the concentrated stream has to meet the treatment standard based on incineration (*see* § 268.41(a) and Appendix II to Part 268), and that, if these streams are aggregated, the aggregated streams must meet the treatment standards based on incineration as well (*see* § 268.41(b); *see also* 51 FR at 40623, both of which state that where wastes are combined for treatment, treatment residues must meet the treatment standard for the common constituents). These settled principles could be confused by a point of aggregation approach.

The practical difficulties the Agency saw with a point of generation approach appear to be manageable. As far as the difficulties of sampling enclosed systems, EPA believes that in most cases waste stream pipes are easily entered by installing sample taps. This should not interfere with on-going treatment processes. No claims of difficulty installing such taps have been made since implementation of the solvent ban rule, which adopted a point of generation approach. Generators also can determine if wastes are prohibited based on knowledge of their waste. (§ 268.7(a)). In extreme cases where these means would severely disrupt process or treatment operations, wastes could be sampled when they exit closed systems.

The Agency also wished to ensure that any determination scheme not interfere with, or discourage legitimate centralized treatment. A point of generation approach would not do so. EPA reiterates that aggregation of waste streams for centralized treatment is not considered to be a form of impermissible dilution (51 FR 40592, 52 FR 22356); it is a form of mixing that facilitates treatment. Artificial aggregation points designed to avoid a prohibition certainly would not be considered legitimate, however. (The Agency would also distinguish the case where a waste not requiring treatment or not aiding in treatment is mixed. This would be impermissible dilution, as it would merely dilute hazardous constituents into a larger volume of wastes to lower constituent concentrations. (51 FR 40592).)

EPA also repeats that California list wastes for which there are no treatment standards may be aggregated for treatment (assuming no impermissible dilution) and would no longer be considered prohibited if they no longer exceed the specified prohibition levels or are rendered nonliquid. For example, if a generator generated liquid lead-bearing wastestreams of 1,000, 300, 40, and 50 mg/l lead and aggregated them for centralized treatment and the waste streams before or after treatment contained less than 500 mg/l lead, the waste currently would not be prohibited. Hazardous sludges generated from wastewater treatment likewise would not be prohibited if they do not contain free liquids; nor would such sludges currently be prohibited if they contained free liquids whose filtrate contained less than 500 mg/l lead. (Should EPA promulgate treatment standards for California-list lead-bearing wastes, then the combined lead-bearing wastes in this example would have to meet that treatment standard. (§ 268.41(b).)

Thus, should EPA ultimately adopt treatment standards for California list metal and free cyanide wastes, these wastes would have to meet or be treated to meet these standards and not simply be treated to reduce concentrations below the prohibition levels or be rendered nonliquid. Where treatment standards are expressed as specified technologies, the Agency has stated in the November 7, 1986 final rule that such specified technologies must be employed. *See e.g.,* 51 FR 40628. For example, in today's final rule, the California list wastes containing PCBs must be treated in accordance with the standards specified in § 268.42 (i.e., thermal destruction in incinerators or high efficiency boilers) and may not be rendered nonliquid in order to avoid the Part 268 requirements. EPA believes that this approach reflects the intent of RCRA section 3004(m) to require treatment to a level or "by a method specified in regulations." Allowing solidification of such wastes in lieu of the specified method(s) would undermine the congressional directive in section 3004(m) to require pretreatment and would make EPA's establishment of treatment standards meaningless.

Under these circumstances, EPA does not see that a point of generation approach would require alteration of legitimate centralized treatment practices, or force unwarranted batch treatment. The Agency consequently sees no reason to alter its existing approach.

3. Ramifications of the Final Approach

Determinations as to whether a waste is both a liquid and exceeds the applicable concentrations of hazardous constituents thus would be made at the point of generation. The generator notification and certification requirements in § 268.7(a) likewise would apply at this point.

This point of generation principle also has several ramifications in determining how to treat prohibited wastes, and to what levels such wastes must be treated. With respect to those wastes for which the treatment standard is specified as a method, the wastes would be considered prohibited at the point of generation, with the further consequence that they would require treatment using such methods. Likewise, where EPA has established performance levels as the treatment standard, wastes would have to be treated until they meet that standard. (See also the correction notice published in the June 4, 1987 **Federal Register**.) Thus, prohibited solvent and dioxin-containing wastes (i.e. solvent and dioxin-containing wastes prohibited at the point described above) would have to be treated to the levels specified in § 268.41. Prohibited solvent or dioxin-containing wastes treated to the one percent level specified in the § 268.30(a)(3) national capacity variance would continue to require treatment to the specified levels. For example, if a prohibited solvent still bottom is incinerated and the incinerator ash residue does not meet the treatment standard but contains less than one percent total F001–F005 solvent constituents, further treatment would be required.

As explained in the June 11, 1987 notice, however, there is one exception to the principle that treatment residues from prohibited wastes must continue to be treated until they meet the treatment standard. This is where treatment results in a residue that belongs to a different treatability group than the initial waste and the Agency has already determined that there is inadequate nationwide capacity to treat the wastes belonging to that group.

For example, if an incinerator was to burn an F001–F005 spent solvent containing greater than or equal to one percent total F001–F005 solvent constituents and generate a scrubber water, this resulting scrubber water belongs to a different treatability group, i.e. the wastewater treatability group. If the scrubber water contains F001–F005 solvent constituents in concentrations less than one percent but greater than the applicable treatment standards, further treatment of the scrubber water would not be required until November 8, 1988 because the Agency has already determined that there is inadequate nationwide capacity to treat liquids containing less than one percent total F001–F005 solvent constituents.

As stated in the June 11, 1987 notice, this distinction comes directly from the Agency's own estimates of available treatment capacity. These estimates included capacity for further treatment of solid (or slurry) solvent treatment residues which did not meet the treatment standards. No capacity was allocated for wastewaters resulting from treatment of these wastes.

The discussion above covers situations where wastes are determined by their initial generator to be presently prohibited at the point of generation (i.e., not subject to any variance). The Agency is clarifying that where the waste initially generated is subject to a national capacity or other variance, any residue from treating the waste remains subject to the variance. This point follows directly from the principle reiterated most recently in the Agency's correction notice (52 FR 21010, June 4, 1987) that the initial generator of hazardous waste determines whether his waste is presently prohibited from land disposal (see § 268.30(a)(3), as amended).

Thus, using F001–F005 solvent wastes as examples, residues from treating small quantity generator wastes (either 1–100 kg/month, or 100–1,000 kg/month), CERCLA response action or RCRA corrective action wastes, or an initial generator's solvent waste containing less than one percent total F001–F005 solvent constituents, would remain exempt regardless of solvent concentration in the residue (or regardless of whether the residues met the treatment standards) since the waste's status has already been determined by the initial generator. The policy rationale for this is that any other result creates a disincentive for treatment. 52 FR 22357. (This discussion assumes that the treatment residues derive solely from treating exempted wastes. If both exempt and regulated wastes are commingled and treated, residues would not automatically be exempt.)

EPA adds several caveats. First, although wastes are considered to be prohibited as early as the point of generation, the California list prohibitions also must necessarily apply at the point of disposal in cases where the waste is not subject to any of the above stated variances. See RCRA sections 3004(d)–(q), 51 FR 40597 (November 7,1986), and 40 CFR 268.7(c) (land disposal facilities are ultimately responsible for ensuring that wastes not meeting the treatment standards or prohibition levels, or not otherwise exempt, are not land disposed). For example, if a waste is initially a nonliquid, but changes its physical form and becomes a liquid (for instance, in transit), the waste would still be prohibited if it exceeds the specified California list concentration levels at the point of disposal. (In this last example, standards could apply to treatment facilities as well. *See e.g.*, § 268.7(b).)

Second, if a non-hazardous waste is treated and the resulting treatment residue is a hazardous waste, the new hazardous waste would be subject to any applicable prohibitions from that point of generation. This is the initial point at which a waste could become subject to RCRA Subtitle C regulation, and therefore to any of the prohibitions. (Furthermore, there is no inconsistency with the regulatory provisions discussed above referring to initial generators, because these provisions apply to initial generators of *hazardous* wastes.)

Finally, as noted in the November 7, 1986, final rule, where a waste generated before a land disposal prohibition effective date is later removed from storage or disposal, it becomes subject to the land disposal prohibitions at that point (assuming that at the time of removal the waste is ineligible for one of several variances and does not already meet the applicable treatment standards). 51 FR 40577. Similarly, residues generated from such wastes, such as leachate or contaminated groundwater containing F001–F005 solvent wastes disposed prior to November 8, 1986, would be viewed as newly generated wastes. Their eligibility for the national capacity variance (or the statutory variance for certain CERCLA response action and RCRA corrective action wastes) would consequently be determined *de novo* upon removal, and not by reference to the composition of the waste prior to the prohibition effective date.

III. Detailed Discussion of Today's Final Rule

A. Free Cyanides and Metals

Today's final rule does not establish prohibition levels or treatment standards for the California list wastes containing free cyanides or metals. These determinations will be made in a separate rulemaking. Today's rule, however, does address the Agency's approach to determining compliance with the statutory prohibitions on the

metal-bearing and cyanide wastes which are automatically effective prior to the separate rulemaking.

1. Definition of Free Cyanides and California List Metals

The Agency proposed to define the universe of prohibited cyanide wastes as any substance that can be shown as having a resonance structure containing a carbon-nitrogen triple bond. The proposed definition would have prohibited the land disposal of wastes containing "total" cyanides above the statutory concentration levels and would have required the use of the Toxicity Characteristic Leaching Procedure (TCLP) to develop a waste extract, which would have then been tested for cyanide concentration levels. The Agency recommended using Method 9010 for Total Cyanide in *Test Methods for Evaluating Solid Wastes, Physical Chemical Methods* (EPA Publication SW-846). This approach was criticized by many commenters as being contrary to the statutory language prohibiting "free" cyanides. Many of these commenters suggested that Method 9010-Cyanides Amenable to Chlorination would be more appropriate. Other commenters suggested that EPA adopt the weak acidic dissociable test from *Standard Methods for the Evaluation of Water and Wastewater* (16th Edition, 1985) (Ref. 4 in Proposal). Commenters in general did not agree with the proposed use of the TCLP to develop a waste extract for further testing.

After evaluating the comments, EPA agrees that the filtrate from the Paint Filter Liquids Test is the portion of the sample that should be analyzed for free cyanides. The Agency is not requiring the use of a particular test, but agrees with commenters that the statutory restriction in section 3004(d) is on "free" cyanides. For analytical purposes, EPA is recommending the use of the Cyanides Amenable to Chlorination test in Method 9010 (EPA Publication SW-846) for determining "free" cyanide concentrations. The Agency believes this is among the more accurate existing methods for measuring free cyanides, it is widely used, and it was recommended by most of the commenters to the proposed rule.

For purposes of the RCRA section 3004(d) prohibition, the California list metals are defined with reference to the periodic table of elements. As discussed in the "Scope and Applicability" section of today's final rule, this requirement applies both to individual constituents and to the relevant metal portion of any compounds containing such metals.

2. Physical Form Requirement

As discussed in the "Scope and Applicability" section of today's final rule, RCRA section 3004(d) prohibits land disposal of the free cyanide and metal wastes only in a liquid form. In determining whether hazardous wastes containing these prohibited constituents are liquids, EPA is requiring use of the Paint Filter Liquids Test. EPA believes that the statutory language referring to "liquid hazardous wastes, including free liquids associated with any solid or sludge" prohibits only the true aqueous portion of the waste plus the filtrate. Not only is this the literal sense of the section 3004(d) language, but the section 3004(c) liquids in landfill provision uses almost identical language (prohibiting disposal in landfills of certain "liquid hazardous or free liquids contained in hazardous waste"), and legislative history to that provision states that this language applies to "liquid in the conventional sense * * * and the free flowing or liquid portion * * * that readily separates." The legislative history further states that the liquid determination can permissibly be made using the Paint Filter Liquids Test. S. Rep. No. 284, 98th Cong., 1st Sess. 22 (1983).

3. Hazardous Waste Requirement

As with the other California list wastes, the free cyanide and metal wastes must be regulated as hazardous under RCRA in order to be subject to the section 3004(d) prohibitions. This provision covers any wastes that are either listed as hazardous under 40 CFR Part 261 or exhibit one or more characteristics of hazardous waste identified in Part 261 (i.e., ignitability, corrosivity, reactivity, or EP toxicity), and which also contain the specified metals or cyanides.

4. Concentration Levels Prohibited From Land Disposal

The Agency proposed to codify the statutory prohibition levels for the California list cyanide and metal wastes; however EPA is not finalizing these proposed levels in today's rule. Instead, EPA is publishing a separate notice of data availability and request for comment requesting comment and data on appropriate prohibition levels and establishing treatment standards for these wastes. Subject to the comments received in response to that notice, EPA will promulgate a final rule addressing these issues.

Prior to promulgation of this separate rule, statutory prohibitions in RCRA section 3004(d) become automatically effective. These concentrations are those described in the section entitled "Summary of Hazardous and Solid Amendments of 1984" at the beginning of today's preamble. As discussed above, EPA interprets the statutory prohibitions as applying when free cyanide or metal concentrations in the filtrate developed using the Paint Filter Liquids Test exceed the statutory concentration levels.

B. Corrosives

1. Final Approach

A *Definition of wastes with pH less than or equal to 2.0.* The Agency proposed to adopt the statutory definition for the liquid hazardous wastes as wastes having a pH less than or equal to two (2.0). No alternative definitions were suggested by commenters. The Agency is therefore finalizing the definition as proposed. The definition is the one currently used in the existing corrosivity characteristic at 40 CFR 261.22(a)(1).

B. *Hazardous waste and physical form requirements.* By definition, acidic wastes are hazardous based on the characteristic of corrosivity found in 40 CFR 261.11(aF)(1) when the pH is less or equal to 2.0. If these wastes are treated to a pH greater than two (2.0), they are no longer characteristic hazardous wastes and may be land disposed in a Subtitle D facility. Additionally, section 3004(d)(2) specifies that the California list land disposal restrictions apply onl y to liquid wastes (with the exception of HOCs). Therefore, since the Agency is not specifiying a technolohgy-based treatment standard, corrosive wastes may be neutralized to a pH greater than 2.0 or rendered nonliquid by chemical fixation or other treatment methods and be eligible for land disposal. If a wastes is hazardous solely because of the characteristic of corrosibity (pH > 2.0), rendering it nonliquid also renders it nonhazardous because the characteristic of corrosivity based on low *pH only applies to aqueous wastes.*

c. *pH levels prohibited.* The Agency proposed to codify the statutory prohibition levels for these acific wastes. To determine if the wastes exceed the prohibitionl level, the Agency proposed to require testing using the test method specified in 40 CFR 261.22(a)(1). Inadvertantly, EPA also proposed (as part of the general proposal to use the TCLP) that this test method was to be applied to a leachate generated by the TCLP. Use of the TCLP is inappropriate for the corrosive wastes, since it involves a pH adjustment step and use of an acidic extractant. EPA had intended that the

pH of a waste be determined by testing the waste sample—not a leachate—to see if it has the properties in § 261.22(a)(1). Thus, today's rule requires that the waste sample be tested using the method specified in § 261.22(a)(1) to determine whether its pH is less than or equal to two (2.0).

2. Determination Not to promulgate Treatment Standards

The Agency proposed that treatment that neutralizes acidic wastes to above two (2.0) are BDAT treatment, and requested comment on whether this type of treatment should be codified as a specified method or performance-based standard. The majority of commenters supported the proposed approach and recommened that treatment be cofified as a performance-based standard. They preferred the performance-based standard because it is consistent with the hazardouw characteristic, it simplifies demonstration of compliance, and it places no limitation on technological developments.

One commenter suggested an alternative treatment standard for corrosive wastes, recommending that the pH levels be raised to a level above four (4.0). The commenter argued that this approach was more consistent with operational recommendations of synthetic liner manufacturers to prevent liner damage caused by acidic wastes. The Agency recognizes the need to fully evaluate treatment performance data and information before promulgating a treatment standard for acidic wastes. The Agency is codifying the statutory prohibition level in today's final rule, but is not promulgating a treatment standard for wastes with pH less than or equal to two (2.0). This approach will not result in any differences for the generator of TSDF, since they still must comply with the prohibition on wastes with a pH less than or equal to two (2.0) specified in 40 CFR 268.32 before the waste is land disposed. The Agency will address the issue of the appropriate treatment standard for corrosive wastes when ti considers the scheluded wastes (51 FR 19300).

Another commenter argued that the Agency should establish an alternative treatment standard for its corrosive wastewater because portions of the wastewater are utilized in a gypsum recovery process that requires the water to be at a pH less than two (2.0). This request does not take into account the statutory language in RCRA section 3004(m) which requires that treatment methods or levels be those "which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents * * *." The commenter's argument regarding its process simply does not address these statutorily mandated requirements. The process in fact is designed to *maintain* the very property which makes the waste hazardous. Thus, even if EPA were to take action to establish treatment standards for these corrosive wastes, the Agency could not grant the commenter's request.

C. Polychlorinated Biphenyls (PCBs)

1. Final Approach

a. *Definition of polychlorinated biphenyls (PCBs).* For the California list restrictions, the Agency is defining PCBs consistent with the definition of 40 CFR 761.3. That provision defines PCBs for purposes of regulation under the Toxic Substances Control Act (TSCA) as "any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain such substance." In addition, inadvertently generated non-Aroclor PCBs are defined as "the total PCBs calculated following division of the quantity of monochlorinated biphenyls by 50 and dichlorinated biphenyls by 5." This was inserted in the TSCA regulations in recognition that monochlorinated biphenyls are less toxic and less persistent than dichlorinated biphenyls, which are themselves less toxic and less persistent than polychlorinated biphenyls with greater than two chlorines.

Although an alternative definition of PCBs was suggested by a commenter, EPA believes that in the absence of an alternative definition of PCBs specified in HSWA, it is reasonable to adopt the existing definition found in the TSCA regulations. The statutory reference to 50 ppm is drawn directly from the Agency's regulations, evincing an intent to use the existing regulatory framework. Furthermore, the regulatory definition accounts for differing degrees of hazard associated with different compounds. Such a definition appears to be consistent with congressional intent, as expressed in section 3004(d), to concentrate on wastes that are known to create substantial risk. Moreover, the Agency believes that an alternative definition would add confusion to an already complex and overlapping framework for regulating PCBs. An alternative definition considered by EPA would not have employed the use of division factors for inadvertently generated PCBs. Under this definition, PCBs would have been defined as "the biphenyl molecule that has been chlorinated to any degree." EPA does not believe that this approach is consistent with congressional intent, therefore, the Agency is adopting the TSCA regulatory definition as discussed above.

b. *Hazardous waste requirement.* Since PCBs are not listed as hazardous wastes under RCRA, PCB-containing wastes are only subject to the California list prohibitions if they are mixed with or otherwise contained in wastes which are listed as hazardous under 40 CFR Part 261, or if the mixture exhibits one or more of the characteristics of hazardous waste identified in Part 261 (i.e., ignitability, corrosivity, reactivity, and EP toxicity).

Transformers often contain both PCBs and hazardous constituents listed in 40 CFR Part 261, Appendix VIII. However, if the waste containing these constituents is not a listed or characteristic hazardous waste, the California list prohibition does not apply. For example, some transformers contain isomers of tetrachlorobenzene and trichlorobenzene. Although several of these isomers (e.g. 1,2,4,5-tetrachlorobenzene and 1,2,4-trichlorobenzene) are listed as Appendix VIII hazardous constituents, EPA has not listed wastes containing these isomers as hazardous where the source of the waste is a spent dielectric fluid. Consequently, these PCB-containing spent dielectric fluids will be subject to the California list land disposal prohibitions only if they are mixed with a listed hazardous waste or if they exhibit a characteristic indentified in Part 261.

c. *Prohibition levels.* EPA is codifying the 50 ppm prohibition level specified in section 3004(d)(2)(D) of RCRA. This level is consistent with the comprehensive PCB regulations existing under the Toxic Substances Control Act (TSCA) and, at this time, the Agency does not have data suggesting that a different level is necessary. Under today's final rule, liquid hazardous wastes containing PCBs at concentrations greater than or equal to 50 ppm are prohibited from land disposal unless they are treated in accordance with § 268.42, are the subject of a successful "no migration" petition under § 268.6, or are granted a case-by-case extension or national capacity variance.

In determining whether a liquid hazardous waste contains PCBs in concentrations greater than or equal to 50 ppm, EPA proposed requiring testing of a leach extract generated using the TCLP. Because the Agency believes that Congress adopted the 50 ppm prohibition level to be consistent with

existing regulations under TSCA, EPA also believes that the test methods required under TSCA are appropriate for use in determining compliance with the land disposal restrictions. The methods specified in the TSCA regulations at 40 CFR 761 do not test leach extracts. Those methods require testing of the total waste. In addition, the statutory prohibition on PCB-containing wastes is expressed in "ppm" rather than "mg/l" as used for the other California list liquid wastes, suggesting that consideration of the solid fraction in the PCB-containing waste is appropriate. Therefore, today's final rule requires that once a hazardous waste containing PCBs is determined to be a liquid, then the total waste (not an extract or filtrate) must be analyzed for purposes of determining compliance with the California list land disposal restrictions.

2. Existing Regulations of PCBs

Regulations promulgated pursuant to TSCA currently address the land disposal of PCB wastes which are not mixed with RCRA hazardous wastes. The TSCA requirements at 40 CFR Part 761 vary depending on the concentration of PCBs in the waste and the physical form in which the waste is disposed, i.e., in bulk liquid form, as a containerized liquid, or as a nonliquid. Disposal of PCBs at concentrations below 50 ppm is not regulated under TSCA unless such concentrations were created by diluting a higher concentration of PCB or unless they are used in specified ways, i.e., as a sealant, coating, dust control agent, pesticide carrier, or as a rust prevention agent on pipes. Liquid PCBs at concentrations greater than or equal to 50 ppm, but less than 500 ppm, may be incinerated or burned in a high efficiency boiler. They may also be land disposed pursuant to the TSCA regulations, but with certain limitations, some of which are summarized in the December 11, 1986 proposed rule (51 FR 44723). Liquid wastes containing PCBs at concentrations greater than or equal to 500 ppm must be incinerated according to TSCA regulations or disposed of by any other approved alternate methods (40 CFR 761.60(e)) that can achieve a level of performance equivalent to the technical standards set in 40 CFR 761.70. Such liquid wastes containing PCBs at concentrations greater than or equal to 500 ppm cannot be land disposed.

3. Relationship Between HSWA and Existing Regulations

Several provisions in HSWA impose restrictions on the land disposal of PCB wastes which are not contained in the existing TSCA or RCRA regulations. The TSCA regulations at 40 CFR 761.1(e) clearly state that where there is an inconsistency between TSCA and RCRA standards, the more stringent regulations govern. In addition, the HSWA legislative history (H.R. Rep. No. 198, Part I, 98th Cong., 1st Sess. 56 (1983)) suggests that allowing the more stringent provisions to govern is also consistent with Congress' understanding of the regulatory scheme. Today's final rule integrates a number of the TSCA requirements into the RCRA framework in order to ensure that where there is an inconsistency between TSCA and RCRA standards the more stringent regulations govern (see § 268.5, § 268.6, § 268.42, and § 268.50 in today's final rule and the accompanying preamble discussions in the section entitled "Modifications to the Land Disposal Restrictions Framework"). For a further discussion of the PCB land disposal requirements in light of the RCRA section 3004(c) liquids in landfill prohibitions and the RCRA section 3004(d) requirements, see the December 11, 1986 proposed rule (51 FR 44723).

4. Treatment Standards

EPA is establishing treatment standards for liquid hazardous wastes containing PCBs at concentrations greater than or equal to 50 ppm. The Agency proposed to require thermal destruction (i.e., treatment in incinerators or high efficiency boilers) of such wastes pursuant to the operating standards set forth in 40 CFR 761.60 and 761.70. None of the commenters challenged the appropriateness of these proposed standards, and EPA is promulgating the treatment standards as proposed. Alternative treatment methods (e.g., chemical dechlorination) may be used where the Administrator has determined that such methods achieve a measure of performance equivalent to that achievable by methods EPA has specified, and where certain other enumerated conditions are satisfied. See § 268.42(b). See the section in today's final rule entitled "Treatment Standards" for a further discussion of the treatment standards applicable to the California list PCB-containing wastes.

5. Prohibition Effective Date

The Agency proposed to grant a 2-year nationwide variance from the July 8, 1987 statutory effective date based on a perceived lack of adequate thermal treatment capacity for the California list PCB wastes. Several commenters stated that there is sufficient treatment capacity for liquid halogenated wastes. Although the commenters did not provide quantitative data to support these assertions, EPA has revised its capacity estimates and determined that there does not appear to be a nationwide lack of adequate capacity to treat liquid hazardous wastes containing PCBs at concentrations greater than or equal to 50 ppm. Thus, the proposed 2-year variance is not being promulgated in today's final rule. Rather, the statutory effective date of July 8, 1987 is applicable to the California list PCB wastes. To the extent that isolated shortages of capacity occur, applicants may apply for case-by-case extensions pursuant to § 268.5. See the section in today's final rule entitled "Capacity Determinations and Effective Dates" for a further discussion of the Agency's basis for the approach.

D. Halogenated Organic Compounds (HOCs)

1. Final Approach

a. *Definition of halogenated organic compounds (HOCs).* HOCs are compounds containing a carbon and a halogen in the molecular formula. Halogens include the five nonmetallic elements in Group VIIA of the periodic table: fluorine (F), chlorine (Cl), bromine (Br), iodine (I), and astatine (At). For purposes of the California list land disposal prohibitions, the Agency proposed a definition for HOCs that would require a carbon-halogen bond. The rationale for this proposed definition was that compounds that lack such a bond, but that have a halogen attached to an atom such as nitrogen (e.g., aniline hydrochloride), are not true HOCs. All the commenters who addressed this issue agreed that a carbon-halogen bond should be required; therefore, today's final rule promulgates the HOC definition as proposed.

b. *Hazardous waste requirement.* Wastes containing HOCs are only subject to the California list prohibitions if the waste is listed as hazardous under 40 CFR Part 261 or exhibits one or more of the characteristics of hazardous waste identified in Part 261. However, the waste listing or characteristic need not be related to the HOC content of the hazardous waste for it to be covered.

c. *Concentration levels prohibited.* The RCRA section 3004(d)(2)(E) prohibition codified today applies only to hazardous wastes containing HOCs in total concentration greater than or equal to 1,000 mg/kg. Although EPA is codifying the statutory prohibition level as proposed, the Agency will be evaluating each hazardous waste containing HOCs in accordance with the final schedule for implementing the land

disposal restrictions (51 FR 19300). At that time, prohibitions on land disposal and treatment standards will be established to the extent necessary for individual HOCs or groups of related HOCs.

In determining the concentration of HOCs in a hazardous waste, the Agency recognized that the proposed carbon-halogen definition presents a potential problem because it would include a number of polymerized and other halogenated compounds that are generally considered nonhazardous due to their relative immobility and lack of toxicity. EPA stated in the proposal that Congress did not indicate an intent to include within the California list prohibitions every possible HOC such as polymers that comprise solid plastics and vinyls. Instead, EPA stated that Congress was concerned with constituents that are mobile and/or potentially hazardous to human health and the environment. Therefore, the Agency proposed to limit the HOCs included under the California list prohibition to those HOCs which are regulated as hazardous under 40 CFR Part 261 or listed in Appendix VIII to Part 261.

Many commenters agreed with the Agency's proposed rationale for limiting the HOC prohibition; however, several suggested that the Agency clarify that polyvinyl chlorides (PVCs) are not subject to the California list prohibitions. Although some commenters supported the reference to Appendix VIII as a means of limiting the HOC prohibition, other commenters stated that testing for Appendix VIII constitutents is difficult due to, among other things, the lack of appropriate test methods and the undefined boundaries inherent in the list (e.g., because of the "not otherwise specified" (N.O.S.) categories). The commenters suggested that EPA substitute Part 264, Appendix IX in place of Part 261, Appendix VIII as a limitation on the HOC prohibition.

EPA agrees with the concerns of commenters regarding testing and is requiring in today's final rule that, in determining whether a hazardous waste contains HOCs in concentrations above the California list prohibition level, only those HOCs which are listed in Part 268 Appendix III must be included in the calculation. Appendix III is being added to Part 268 in today's final rule. It consists of all HOCs which EPA currently analyzes in establishing section 3004(m) treatment standards expressed as performance levels. (See the "BDAT Pollutant List" in *Generic Quality Assurance Project Plan for Land Disposal Restrictions Program (BDAT)*, U.S. EPA, Office of Solid Waste, March 12, 1987.) The Agency has also added PCBs not otherwise specified to this Appendix because the "BDAT Pollutant List" that formed the basis for Appendix III only lists certain Aroclor PCBs (whereas the existing TSCA regulations apply to non-Aroclor PCBs as well).

Appendix III is a finite list of constituents for which test methods exist, thereby addressing the commenters' concerns. It includes only HOCs found in Appendix VIII of Part 261, and so is limited to toxic HOCs, satisfying the concerns of commenters and the Agency that innocuous HOCs not be included. EPA is not adopting the Part 264 Appendix IX limitation suggested by several commenters because it has not been finalized as yet and because Appendix IX only addresses those HOCs that are water soluble, and so would not be appropriate when HOCs are found in solid matrices. (When finalized, Appendix IX will serve as the new list of constituents for which ground water monitoring is required.) The list adopted in Appendix III to Part 268 also contains HOCs that are not water soluble and, therefore, EPA believes it addresses congressional concerns and better represents a comprehensive yet enforceable list of HOCs to be regulated.

In finalizing the HOC prohibition, EPA is reiterating that compounds such as PVCs, even if contained in hazardous wastes, are not within the scope of the California list prohibitions because PVCs are not included on Appendix III to Part 268. However, monomeric vinyl chloride is subject to the restrictions because it is listed in Part 268 Appendix III.

In testing for the HOCs discussed above, EPA proposed to require use of the TCLP. Several commenters were critical of this approach because they stated that the statutory prohibition on HOCs "in total concentration" indicated that EPA should require total constituent analysis.

The Agency agrees with the comments that a total constituent analysis better reflects congressional intent (as well as the literal statutory language) regarding the HOC prohibition and, therefore, today's final rule departs from the proposed approach in this respect. As a result, the entire waste (not an extract) must be tested in order to determine the concentrations of the HOCs discussed above. However, as in the November 7, 1986 final rule, generators need not test their wastes if they can make a determination as to whether or not they are restricted using knowledge of the waste. In doing so, generators must maintain all supporting data used to make such a determination on-site in the generator's files.

2. Relationship to California List Prohibition on PCBs

As discussed earlier in the preamble, today's final rule codifies the RCRA section 3004(d)(2)(D) prohibition on the land disposal of liquid hazardous wastes containing PCBs at concentrations greater than or equal to 50 ppm. Because PCBs are also halogenated organic compounds, EPA reads the PCB prohibition as placing an upper limit of 50 ppm on the concentration of PCBs that may be contained in a hazardous waste containing HOCs which is land disposed. (As discussed more fully later in today's preamble, the treatment standards and prohibition effective dates for the PCB-containing wastes, as the more waste-specific determinations, would control and the HOC treatment standards and effective dates are superceded).

The limitation of 50 ppm, however, is only applicable to *liquid* hazardous wastes containing PCBs. Therefore, a nonliquid hazardous waste containing PCBs at concentrations greater than or equal to 50 ppm may be land disposed without violating the California list PCB prohibition on HOCs as long as the total concentration of HOCs does not exceed 1,000 mg/kg. For example, a nonliquid hazardous waste containing 200 mg/kg (ppm) PCBs and 700 mg/kg (ppm) other HOCs may be land disposed because the 50 ppm prohibition does not apply to nonliquids and because the 900 mg/kg total HOC concentration does not exceed the 1,000 mg/kg threshold promulgated in today's final rule.

If the total concentration of HOCs in either a liquid or nonliquid hazardous waste is greater than or equal to 1,000 mg/kg, the waste is prohibited from land disposal even if the concentration of PCBs is below 50 ppm. For example, a liquid hazardous waste containing 25 mg/kg (ppm) PCBs and 980 mg/kg HOCs other than PCBs in prohibited from land disposal under the California list HOC prohibition despite the fact that the California list prohibition on PCBs would allow up to 50 ppm PCBs in a liquid hazardous waste to be land disposed. Also, a nonliquid hazardous waste containing 400 mg/kg (ppm) PCBs and 700 mg/kg HOCs other than PCBs is prohibited from land disposal despite the fact that existing regulations promulgated under TSCA would allow such nonliquid PCB wastes to be disposed in an approved landfill.

3. Treatment Standards

EPA is establishing incineration as the treatment standard for all hazardous wastes containing HOCs in total concentration greater than or equal to 1,000 mg/l except dilute HOC wastewaters (i.e., liquid hazardous wastes that are primarily water and contain HOCs in total concentration less than 10,000 mg/l). As explained more fully below, however, if an HOC-containing waste already is subject to a treatment standard for a specific HOC (e.g., and F001 or F002 spent solvent, or a prohibited dioxin- or PCB-containing waste), the treatment standard applicable to the more specific HOC waste would control. Thus, when all of the treatment standards become effective, the wastes need not be incinerated to meet the solvent, dioxin, and PCB treatment standards. (See the section of today's final entitled "Treatment Standards" for a further discussion of the treatment requirements applicable to the California list HOC-containing wastes).

4. Prohibition Effective Dates

Due to a lack of incineration capacity, the Agency proposed to grant a 2-year nationwide variance from the July 8, 1987 statutory effective date for the California list wastes requiring incineration. EPA did not propose to grant a nationwide variance for the dilute HOC wastewaters. As a result, these wastes would be prohibited from land disposal as of July 8, 1987. EPA received mixed comments regarding available treatment capacity for the California list HOC wastes; however, no quantitative data were submitted suggesting that incineration capacity was adequate. Therefore, the Agency is promulgating the 2-year variances as proposed. To the extent that new data are developed by the Agency, revised capacity determinations will be made, some of which could result in the revocation of existing nationwide variances. (For a further discussion of these issues, see the section in today's final rule entitled "Capacity Determinations and Effective Dates.")

E. Treatment Standards

Today's final rule promulgates treatment standards for several of the California list wastes. Unlike the concentration-based treatment standards established for the solvent- and dioxin-containing wastes on November 7, 1986 (51 FR 40572), today's treatment standards are expressed as specified technologies. These specified technologies are applicable to the California list wastes containing HOCs (except for dilute HOC wastewaters) and the California list wastes containing PCBs. Today's final rule does not establish treatment standards for the California list wastes that contain metals or free cyanides. Treatment standards for these wastes are being addressed in a separate final rulemaking. Today's final rule also does not establish treatment standards for the California list corrosive wastes. As a result, the statutory prohibitions on liquid hazardous wastes containing cyanides, metals, and those having a pH less than or equal to two (2.0) govern the degree to which such wastes must be treated prior to land disposal.

1. HOC Containing Wastes

As discussed in the proposed rule (51 FR 44725), the treatment technologies applicable to hazardous wastes containing HOCs in total concentration greater than or equal to the 1,000 mg/kg statutory prohibition level are similar to those technologies identified as the basis for establishing BDAT for the F001–F005 solvent wastes. (F001 and F002 spent solvents are halogenated organic compounds.) These technologies include incineration, batch distillation, thin film evaporation, fractionation, biological degradation, activated carbon adsorption, and steam stripping.

a. *Dilute HOC wastewaters.* Among these technologies, EPA determined in the November 7, 1986 final rule that wastewater treatment technolgies such as biological treatment, activated carbon adsorption, and steam stripping should form the basis for concentration-based treatment standards applicable to the F001–F005 solvent wastewaters. However, the Agency did not propose to establish treatment standards for HOCs not covered by the November 7, 1986 final rule. The rationale for this approach was that the wide variety of contituents included within the term "halogenated organic compounds", even as limited in this rulemaking, makes it impractical at this time for EPA to develop wastewater treatment standards expressed either as concentration levels or as specified technologies. Application of technologies such as biological treatment, activated carbon adsorption, or steam stripping may be effective for many HOC wastes; however, a generalization that one or all of them constitutes BDAT for such a wide variety of compounds is not possible at this time.

In the absence of data submitted by the commenters, EPA is promulgating the dilute HOC wastewater prohibition as proposed. As a result, dilute HOC wastewaters (i.e., wastes that are primarily water and contain less than 10,000 mg/l HOCs) must be treated to concentrations below the 1,000 mg/l statutory prohibition level prior to land disposal. However, no particular methods for achieving this level are specified in today's final rule. As stated in the proposal, EPA will reevaluate each of the HOCs covered under the California list prohibitions (except for the solvent and dioxin-containing wastes for which the Agency has already established treatment standards on November 7, 1986) in accordance with the schedule published in the **Federal Register** on May 28, 1986 (51 FR 19300).

b. *Other HOC wastes.* For the California list HOC wastes that are not dilute wastewaters as defined above, EPA proposed to establish treatment standards expressed as a specified technology. The required method specified in the proposal was incineration in accordance with the existing requirements of 40 CFR Part 264 Subpart O or 40 CFR Part 265 Subpart O.

One commenter stated that the administrative record does not support the Agency's selection of incineration as BDAT for these non-wastewater hazardous wastes containing HOCs in total concentration greater than or equal to 1,000 mg/kg. The same commenter also stated that in establishing incineration as BDAT the Agency must demonstrate at least the same level of treatment performance as that required for permitting under 40 CFR Part 264 Subpart O. For example, the commenter asserted that since EPA is promulgating a generic rulemaking, it must demonstrate 99.99% destruction and removal efficiency (four 9s DRE) for all HOCs the Agency includes within the scope of the HOC treatment standard.

The Agency disagrees with the commenter that the administrative record does not support EPA's selection of incineration as BDAT for the non-wastewater HOC wastes subject to today's final rule. In the preamble to the proposed rule (51 FR 44725), the Agency cited the November 7, 1986 final rule as support for a determination that incineration represents BDAT for most organic liquids as well as organic and inorganic sludges and solids. Further support for incineration as the basis for BDAT is the fact that incineration is presently a demonstrated and currently used treatment method for most PCB compounds. These halogenated organic PCB compounds are very stable and difficult to destroy. The background documents for the November 7, 1986 final rule contain data regarding the incineration of hazardous wastes

containing HOCs (chlorinated solvents). The data summarize the performance of 10 incinerators at nine facilities. Of the nine facilities, seven facilities incinerated HOC wastes and all seven showed a reduction in the concentration of HOCs in incinerator ash sufficient to satisfy the RCRA section 3004(m) requirement that any treatment levels or methods specified by EPA substantially diminish the toxicity of the waste so that short-term and long-term threats to human health and the environment are minimized.

The requirement that hazardous waste incinerators achieve 99.99% DRE is codified in the existing RCRA regulations under Part 264 Subpart O. The requirement is also mandated by statute. RCRA section 3004(o)(1)(B). The California list final rule does not reopen consideration of the permit standards. If a facility demonstrates that a restricted waste cannot be incinerated in compliance with Subpart O requirements, the facility may petition the Agency for a treatment variance pursuant to § 268.44 or the facility may petition EPA for approval to use an alternative equivalent treatment method pursuant to § 268.42(b).

The Agency recently proposed that burning HOC wastes in boilers industrial furnaces in compliance with proposed Part 266 standards would be equally effective as Subpart O incineration and suggested that such methods could form the basis for a revised determination of BDAT. 52 FR 16982 (May 6, 1987). These standards could provide for use of these alternatives to incineration in treating prohibited HOC wastes without requiring a case-specific demonstration as to equivalency pursuant to § 268.42(b).

c. *Applicability of today's treatment standards.* Although EPA has determined that incineration is an appropriate treatment standard for the broad category of wastes referred to as HOCs, the Agency recognizes that the California list was intended as a starting point in the land disposal restrictions and so where the Agency has developed waste-specific data it is desirable to refine the treatment requirements accordingly. Such waste-specific requirements are likely to be more reliable, as the wastes themselves are better characterized. Furthermore, as discussed in the November 7, 1986 final rule, the Agency prefers to establish concentration-based treatment standards rather than treatment standards expressed as specified technologies because EPA believes that this will provide the regulated community with greater flexibility in meeting treatment standards and will encourage the development of more efficient and innovative technologies.

Consistent with these principles, and in response to a commenter's concern over which treatment standards apply where a waste contains several constituents, the HOC treatment standards promulgated in today's final rule are only applicable to those HOCs that are not covered by other Agency rulemakings under § 268.41, § 268.42, or § 268.43. The Agency has provided in § 268.42 that treatment standards established for wastes containing individual California list constituents will supersede today's treatment standards. With respect to the prohibition effective date, the waste-specific determination that adequate treatment capacity does or does not exist for the more specific type of HOC waste would also be controlling. Therefore, § 268.32 states that the prohibition effective date established for the more specific HOC waste would apply, not the prohibition effective date established today for the generic HOC wastes.

For example, a restricted waste (i.e., a waste to which no variances apply) containing an F001 or F002 halogenated spent solvent constituent (such as trichloroethylene—F001) is subject to a concentration-based treatment standard. See Table CCWE, 51 FR 40642, November 7, 1986). Thus, such a waste need only be treated to meet the applicable levels in Table CCWE. The Agency is not requiring that incineration be used to achieve this level. However, the waste must be treated to these levels effective November 8, 1986 and is not entitled to the 2-year nationwide capacity variance applicable to non-solvent HOCs.

The Agency cautions, however, that these principles stating that waste-specific determinations as to treatment standards and effective dates are controlling over more generic determinations only applies where the wastes are a subset of HOCs for which treatment standards and prohibition effective dates exist. (The wastes currently affected by this overlap are the prohibited solvent, dioxin, and PCB wastes. Several additional examples of the Agency's approach in such cases are provided following the section entitled "Capacity Determinations and Effective Dates" in today's preamble.) Where a hazardous waste contains both HOCs and non-HOC constituents (e.g., prohibited levels of a California list metal in liquid form), the waste would be prohibited from land disposal until it is in compliance with the treatment standard for both HOC and non/HOC constituents (or, until treatment standards are promulgated for the California list metals, the waste also meets the statutory prohibition levels or has been treated and rendered nonliquid). In this case, unlike the case of the HOC/more-specific-HOC overlap, there is no necessary relation between treatment of the non-HOC constituent and the HOCs, so that HOCs could go untreated if the treatment standards for only the non-HOC constituents applied. The general principle here is that where different constituents are present in the same waste (as opposed to one constituent appearing on two lists, e.g., an F001–F002 solvent which is also an HOC), all of the constituents in the waste must be in compliance with, or be treated to comply with, all specified treatment standards (or prohibition levels where no treatment standards have been established). The same principle would apply in determining prohibition effective dates for wastes containing HOCs and non-HOC constituents. Unless the Agency had specifically addressed this type of waste matrix in its capacity determinations, the prohibition effective date for each constitutent would be applicable.[2]

For example, where a liquid hazardous waste contains both California list metals above the statutory prohibition levels and HOCs in total concentration greater than or equal to 10,000 mg/l, the applicable prohibition effective dates are July 8, 1987 for the metal portion of the waste and July 8, 1989 for the HOC portion. This reading is not only consistent with the Agency's analysis of available treatment capacity (EPA is finding that there presently does not exist a nationwide shortage of treatment capacity for such metals), but it is also necessary to avoid situations where the Agency would be granting a national capacity variance for a period longer than two years. This could happen, for instance, in the case of an F001–F005 solvent waste which is entitled to the 2-year variance from the November 8, 1986 prohibition effective date but which also contains prohibited concentrations of California list constituents (e.g., metals) for which EPA

[2] Even if the Agency had addressed this type of waste matrix, EPA is not precluded from revising its determinations as to treatment standards and corresponding prohibition effective dates (within certain statutory constraints regarding the length of variances to the effective date.) However, the Agency's subsequent determination would have to evince a clear intent to supersede an earlier determination; otherwise each prohibition effective date would apply.

established an effective date later than November 8, 1988 (assuming only for purposes of this example that such a variance was granted for the metal-bearing wastes). Since national capacity variances cannot exceed two years (RCRA section 3004(h)(2)), the variance on the solvent portion of the waste could not extend beyond November 8, 1988. For these reasons, today's final rule states in § 268.32 that constituents in a waste may become subject to prohibitions different times.

2. PCB-Containing Wastes

The Agency proposed to establish treatment standards expressed as specified technologies for liquid hazardous wastes containing PCBs in concentrations greater than or equal to 50 ppms. The proposed methods were thermal treatment pursuant to the technical requirements in the TSCA regulations at 40 CFR 761.60 (burning in high efficiency boilers) or 40 CFR 761.70 (incineration). Commenters did not challenge the appropriateness of the well established TSCA treatment specifications, therefore, EPA is finalizing the treatment standards as proposed.

The treatment standards promulgated today in § 268.42(a) are consistent with the TSCA regulations which require the incineration of liquid wastes containing PCBS at concentrations greater than or equal to 500 ppm. Liquid hazardous wastes containing PCBs at concentrations greater than or equal to 50 ppm and less than 500 ppm may be burned in either high efficiency boilers or in incinerators. As with the prohibited HOC weastes or any other wastes subject to treatment standards expressed as specified technologies, alternative equivalent methods may be used provided they are approved by the Administrator according to the standards and procedures specified in § 268.42(B).

Applications for approval of alternative equivalent methods should be submitted to the EPA Administrator; however, where such applications involve PCB-containing wastes copies should also be sent to the Director, Exposure Evaluation Division, Office of Toxic Substances, and to the Chief, Waste Treatment Branch, Office of Solid Waste.

Regardless of whether the specified methods in § 268.42(a) or alternative equivalent methods approved under § 268.42(b) are employed, EPA is clarifying that, since the PCB wastes subject to today's prohibitions are contained in RCRA hazardous wastes, compliance with the applicable provisions in 40 CFR Parts 264, 265, and 266 is also required. The more stringent technical operating requirements for incineration in the TSCA regulations are applicable; however, facilities treating these liquid hazardous wastes containing PCBs must also be in compliance with existing RCRA interim status or permit standards specified in Part 264 and 265. In addition, any Part 266 regulations that may be promulgated with respect to the burning of hazardous wastes in boilers and industrial furnaces will also apply. (See 52 FR 16982, May 6, 1987.)

Liquid hazardous wastes may contain both PCBs and other hazardous constituents for which EPA has established different treatment standards or prohibition effective dates. An example would be solvent wastes and PCB wastes mixed in a single matrix. In this circumstance, both sets of treatment standards and effective dates would apply. This is consistent with the principle outlined above that where different constituents are present in a waste, all applicable treatment standards and prohibition effective dates must be complied with.

F. Capacity Determinations and Effective Dates

1. HOC–Containing Wastes

On December 11, 1986, EPA proposed that liquid hazardous wastes containing halogenated organic compounds (HOCs) in total concentrations greater than or equal to 1,000 mg/l and less than 10,000 mg/l HOCs ("dilute HOC wastewaters") be prohibited effective July 8, 1987. EPA did not consider proposing a 2-year nationwide variance for the dilute HOC wastewaters, in part, because the Agency believed it was legally precluded from granting capacity variances where treatment standards are not specified. For all other California list HOC wastes, EPA proposed incineration as the required treatment method and proposed to grant a 2-year nationwide variance from the July 8, 1987 prohibition effective date due to a lack of incineration capacity. For these wastes, EPA stated that incineration capacity was already exhausted as a result of the land disposal prohibitions for solvent-containing hazardous wastes.

Several commenters suggested that there was available thermal treatment capacity for liquid HOC wastes. Other commenters questioned whether the Agency was in fact legally precluded from granting capacity variances where it did not establish treatment standards. Additional commenters noted that the Agency had already found that there is inadequate capacity to treat dilute solvent wastewaters, which are a subset of dilute HOC wastewaters, and noted the incongruity of not granting a corresponding variance for the dilute HOC wastewaters. The Agency has reexamined these issues in light of the comments received and in light of new information. EPA's findings are set out below.

a. *Legal constraints on granting national capacity variances.* As stated in the Agency's recent notice of data availability and request for comment (52 FR 22356, June 11, 1987), the threshold issue here is whether the Agency is barred as a matter of law from granting capacity variances where it does not specify treatment standards. Upon reexamination, EPA believes there is no absolute legal constraint. No commenter to the June 11, 1987 notice challenged this conclusion. The statute itself contemplates that such variances can be granted. Section 3004(h)(2) indicates that the Agency may grant a national capacity variance in either of two cases: (1) With respect to wastes prohibited when the Agency promulgates regulations pursuant to section 3004(d)–(g); or (2) with respect to hazardous wastes "subject to a prohibition" under those same subsections. In this latter case, the prohibition would take effect by operation of law (i.e., the so-called statutory hammer would fall), and no treatment standards would be established. Yet the statute states that EPA remains authorized to grant national capacity variances. The Agency could grant case-by-case extensions of the effective date under section 3004(h)(3) as well, since (h)(3) authorizes extensions to an "effective date which would otherwise apply" under subsections (d)–(g) or subsection (h)(2). These effective dates, as just explained, can take effect whether or not the Agency promulgates treatment standards.

In addition, the statutory standard that authorizes EPA to grant capacity variances is not identical to the language in section 3004(m) authorizing EPA to establish waste treatment standards. The Agency construes this to mean that it need not consider precisely identical factors. Section 3004(h)(2) requires the Agency's determination to be based on availability of "adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment * * *". This can either be broader or narrower, under different circumstances, than treatment satisfying the section 3004(m) standards. 51 FR at 40600. The key point here, however, is that the existence of the different statutory standards for

granting capacity variances and establishing treatment standards confirms that the two determinations are not inextricably linked.

b. *Determination not to grant national capacity variance for dilute HOC wastewaters.* Although the Agency's rationale at proposal for not granting national capacity variances for dilute nonsolvent HOC wastewaters would no longer apply, the Agency does not believe such a variance is warranted. The Agency's estimates are that these wastes are generated in low volumes, and most of these wastes are believed to contain less than the statutory HOC prohibition level. 52 FR 22358. No commenter challenged this conclusion. In addition, there is some available commercial capacity to treat these wastes. 51 FR 40614.

Commenters to the December 11, 1986 proposed rule and the June 11, 1987 notice did not document any shortage of available treatment capacity; however, several suggested that the Agency's determination in the November 7, 1986 rule that there is inadequate treatment capacity for certain dilute solvent wastewaters (which are also HOCs) is inconsistent with the proposed approach not to grant a nationwide variance for the dilute HOC wastewaters. The two rules are consistent. The dilute solvent wastewaters granted a national capacity variance in the November 7, 1986 rule are not limited to wastes containing 1,000 mg/l solvent HOCs. Rather, many of those wastes contain less than 1,000 mg/l solvent HOCs and, therefore, are not subject to the capacity demands imposed by the California list prohibitions.

The Agency notes, however, that the national capacity variance for F001–F005 solvent-containing wastewaters would continue to apply even if the solvent wastes also contain over 1,000 mg/l HOCs as long as the wastewater is regulated as hazardous because of the F001–F005 solvent constituents. This is because EPA has already addressed these specific types of HOC wastes on November 7, 1986 and has indicated in the California list proposal (51 FR 44725) and earlier in today's preamble that such waste-specific determinations supersede the California list determinations. However, if the solvent-HOC hazardous wastewater is not regulated as hazardous by virtue of being an F001–F005 solvent, it does not meet the definition of those wastes addressed in the November 7, 1986 rule and, therefore, it is subject to the prohibition effective date promulgated for the dilute HOC wastewaters. As a result, the hazardous waste would be prohibited effective July 8, 1987 despite the fact it might contain constituents identical to those specified in the F001–F005 listings.

C. *Determination to grant national capacity variance for HOC liquids containing greater than 10,000 mg/l HOCs and HOC solids.* As stated earlier in this section to today's final rule, EPA has specified incineration as the required treatment for all California list HOC wastes except dilute HOC wastewaters and determined that, due in large part to the additional demand placed on incinerators as a result of the November 7, 1986 solvent restrictions, there is a nationwide lack of incineration capacity. Several commenters suggested that incineration capacity exists for the liquid HOC wastes; however, quantitative data were not submitted to support these assertions. Other commenters agreed with the Agency's capacity analysis as discussed in the proposed rule (51 FR 44732). Based on EPA's data and public comments, the Agency is granting the proposed 2-year nationwide variances from the July 8, 1987 prohibition effective date for these categories of California list HOC wastes.

As noted in the previous section entitled "Treatment Standards," the Agency prefers to establish concentration-based treatment standards rather than treatment standards expressed as specified technologies because concentration-based standards provide the regulated community with flexibility and are believed to encourage the development of innovative new treatment processes or more efficient operation of existing technologies. In addition, EPA intends to revise treatment standards as new technologies emerge or the Agency obtains new data. For example, the Agency's recent proposal (52 FR 16982, May 6, 1987) to regulate the burning of hazardous wastes (including HOCs) in boilers and industrial furnaces and to specify numerous operating requirements could form the basis for a revision of the HOC treatment standard. In the absence of regulatory standards specifying operation of these devices, the Agency is not yet comfortable including them as treatment methods, and intends to first analyze comments to the May 6, 1987 proposal before instituting any such action. Should EPA revise the treatment standards as mentioned above, or in other ways, a revised capacity determination will be required in order to justify the continuance to today's national capacity variances.

2. PCB-Containing Wastes

On December 11, 1986, EPA proposed treatment standards for the California list liquid hazardous wastes containing PCBs at concentrations greater than or equal to 50 ppm. In proposing these treatment standards (i.e., thermal treatment in accordance with existing technical requirements set forth in the TSCA regulations at 40 CFR Part 761), EPA also proposed to grant a 2-year nationwide variance based on a perceived lack of such thermal treatment capacity.

A reevaluation of existing data and new volume and incineration capacity data indicate that there is not a nationwide shortage of capacity to manage the small volumes of these PCB wastes that are currently land disposed.

For the liquid wastes containing PCBs at concentrations greater than or equal to 500 ppm, the TSCA regulations in 40 CFR Part 761 already require incineration. Since none of these wastes can permissably be land disposed currently, the California list prohibitions do not add any incremental demand to a capacity analysis. Therefore, the Agency is not granting the proposed 2-year nationwide capacity variance. As with the HOC wastes discussed above, any individual demonstrations of capacity shorfalls may warrant a case-by-case extension provided the requirements of § 268.5 are met.

The primary impact of the California list prohibitions on PCB-containing wastes is on liquid wastes containing PCBs at concentrations greater than or equal to 50 ppm and less than 500 ppm. Such wastes could previously be land disposed under the TSCA regulations provided absorbents are added and other requirements are met. Today's final rule prohibits the land disposal of such concentrations if contained in hazardous waste; however, Agency data indicate that very low volumes are currently being land disposed. In addition, treatment capacity in high efficiency boilers and alternative technologies (e.g., chemical dechlorination) appear to be adequate. Therefore, additional demand for treatment as a result of the California list prohibitions appears minimal and existing estimates of capacity supply do not warrant granting a nationwide variance for these wastes. This conclusion was not disputed by any commenter to the June 11, notice.

3. Metals, Free Cyanides, and Corrosives

The Agency stated in the November 7, 1986 final rule (51 FR 44732) and the June

11, 1987 notice (52 FR 22359) that it does not believe it is necessary to grant a national capacity variance for the California list metal, cyanide, and corrosive wastes, given the relative ease with which treatment can be conducted and unregulated tank capacity can be installed. Several commenters challenged this conclusion. EPA is currently reevaluating its assumption that tank capacity and associated treatment devices can be rapidly installed; however, the Agency does not believe it can currently justify granting of national capacity variances given its uncertainties about volumes of wastes generated, existence of commercial treatment capacity, plus the ability to treat these California lists wastes to render them nonliquid (ordinarily a relatively unsophisticated treatment process) and, therefore, no longer prohibited. In addition, the fact that EPA has only received two petitions to date requesting case-by-case extensions for California list wastes suggests that no national shortages exist. To the extent that there are isolated shortages in capacity, case-by-case extensions may be granted pursuant to the requirements of § 268.5. Although today's final rule does not grant a nationwide variance for these wastes, the Agency is concerned that certain large volume flows might pose a capacity problem, and is compiling and evaluating data relevant to future capacity determinations.

G. Examples Illustrating Integration of Today's Final Rule With Other Land Disposal Restrictions Rules

The following examples are the Agency's interpretation of the operation of today's final rule. (These examples assume that none of the exemptions in §§ 268.4, 268.5, and 268.6 apply.)

1. *Generator A generates a liquid hazardous waste containing 2,000 ppm HOCs, some of which are F001 hazardous waste solvents.* The waste must meet the treatment standard for the F001 solvent by November 8, 1988. The treatment standards and prohibition effective dates for spent solvent wastes control here because these solvents are a subset of HOCs already addressed in the November 7, 1986 final rule. (See § 268.30(a)(3) which states that solvent wastes containing less than 1% total F001–F005 constituents as initially generated are prohibited effective November 8, 1988. 51 FR 40641, 52 FR 21012, 21017.)

2. *Generator B generates a nonliquid hazardous waste containing 12,000 ppm HOCs, over 10,000 ppm of which are F001 solvents.* For the same reasons as the previous example, the waste must meet the treatment standard for F001 solvents, but it need not be incinerated to do so. The land disposal prohibition for F001 wastes containing greater than or equal to 1% total F001–F005 solvent constituents is already in effect (since November 8, 1986). (This answer assumes that the waste is not generated by a small quantity generator, a CERCLA response action, or RCRA corrective action.)

3. *Generator C, a small quantity generator (SQG) of 100–1,000 kg per month of hazardous waste, generates a spent solvent waste containing 20,000 ppm of F001 solvents and 25,000 ppm of other HOCs.* The treatment standard for F001 solvents will apply as of November 8, 1988 because the Agency has determined that there is currently insufficient nationwide treatment capacity for such spent solvent wastes generated by SQGs. (See §268.30(a)(1) at 51 FR 40641.) As these SQG F001 solvents are a subset of HOCs already addressed in the November 7, 1986 final rule, their treatment standards and prohibition effective data will control.

4. *Generator D, a large quantity generator, generates a non-CERCLA liquid hazardous waste containing 600 ppm PCBs and 11,000 ppm hazardous waste spent chlorinated solvents.* The waste must meet the treatment standard for both solvents and PCBs, and must do so by incineration. These prohibitions are effective immediately. Solvents and PCBs are considered to be different constituents and, therefore, both sets of treatment standards and prohibition effective dates (November 8, 1986 and July 8, 1987, respectively) apply. While the earlier examples illustrate that the HOC prohibitions are superseded by prohibitions on more specific types of HOCs, this is not the case here because solvents are not a subset of PCBs or vice versa.

5a. *Generator E, a small quantity generator (100–1,000 kg/mo), generates the same waste as Generator D in the previous example.* Because EPA has not found any shortage in nationwide PCB treatment capacity, this waste would have to be incinerated as of July 8, 1987.

5b. *Same facts as the previous example, except the waste is not a liquid.* Only the treatment standards and November 8, 1986 prohibition effective date for the solvent applies because nonliquid PCB wastes are not prohibited in today's final rule.

6. *Generator F generates a liquid hazardous waste containing 11,000 mg/l HOCs and 600 mg/l lead.* The HOC portion of the waste is not prohibited until July 8, 1989. The metal portion of the waste is prohibited immediately. Once the HOC prohibition becomes effective, the waste cannot be land disposed until it has been incinerated. The residue from incineration may be land disposed if it is a nonliquid (e.g., an ash) or, if still a liquid (e.g., a scrubber water), it contains less than 500 ppm lead (or more stringent levels that may be specified). The general principle here is that where a waste contains different constituents that are not subsets, the waste must meet the treatment standards and prohibition effective dates for each such constituent.

H. Comparative Risk and Available Treatment Alternatives

As EPA recognized in establishing a framework for implementing the statutorily mandated land disposal restrictions, Congress did not intend that risks to human health and the environment be increased as a result of such restrictions. To help prevent situations in which regulations restricting hazardous wastes from the land disposal would encourage treatment technologies posing greater risks than those posed by direct land disposal, EPA is conducting comparative risk analyses. In the November 7, 1986 final rule (51 FR 40572), the Agency conducted comparative risk assessments for the first category of wastes subject to the land disposal restrictions, i.e., certain dioxin-containing the solvent-containing hazardous wastes.

The Agency has conducted comparative risk assessments in conjunction with establishing section 3004(m) treatment standards for several of the California list wastes. The methodology employed is similar but not identical to that utilized in the November 7, 1986 solvents and dioxins final rule. The RCRA Risk-Cost Analysis (WET) Model continues to be the primary tool for assessing comparative risks; however, the WET Model has been revised on the basis of detailed case studies performed for the November 7, 1986 final rule and public comments responding to the Agency's approach in that rulemaking.

Results of the comparative risk analysis are not being used to allow continued land disposal of untreated hazardous waste. Instead, treatment technologies that are determined to pose greater total risks than land disposal of untreated wastes are excluded (i.e., considered "unavailable") as a basis for establishing the section 3004(m) treatment standards. If the best or most efficient treatment technology for a waste is determined to be riskier than land disposal, the decision to classify it as unavailable will have a direct impact

on the level or method established as the section 3004(m) treatment standard. The treatment standard, which must be based on the capabilities of the best demonstrated available treatment technologies for a waste, is then based upon the capabilities of the best demonstrated treatment technology that does not pose greater risks than land disposal. To the extent that the next best treatment technology performs less efficiently than the best technology (in terms of the fate of its residuals in the environment), the resulting section 3004(m) treatment standard will be less stringent.

As noted in the November 7, 1986 final rule, treatment technologies identified as riskier than land disposal, and therefore, classified as unavailable for purposes of establishing standards, may still be used by facilities in complying with treatment standards expressed as performance levels. Accordingly, EPA is committed to developing sufficient regulatory controls or prohibitions over the design and operation of these technologies to ensure that their use in complying with the treatment standards does not result in increased risks to human health and the environment. The analyses conducted in support of these comparative risk assessments will provide a basis for developing such controls or prohibitions, however, additional supporting data will be necessary. Where, as in today's final rule, the section 3004(m) treatment standards are expressed as specific methods which must be utilized, a determination to classify a treatment alternative as unavailable will prohibit the use of that technology in complying with the applicable treatment standards.

The comparative risk analysis conducted for selected California list wastes estimated the human health risks of land disposal practices and treatment alternatives for California list PCB and HOC wastes. These assessments produced estimates of two measures of risk: the probability of harm to the maximum exposed individual (MEI risk); and the total number of cases of health effects (population risk). For a treatment to be considered unavailable with respect to a certain waste stream: (1) It had to be more risky than land disposal along all points of the risk distribution; (2) the treatment and land disposal risks had to share the same medium and constitutent of concern; and (3) the first two conditions had to be met for both the population and MEI risk distributions for that waste stream.

Results of the comparative risk assessments indicate that the best demonstrated treatment methods for the PCB and HOC wastes are not clearly riskier than land disposal. Whenever treatment is less risky or it is uncertain that a given treatment technology or treatment train is clearly riskier than land disposal, as in today's final rule concerning California list wastes, the Agency will consider the treatment available for determining treatment standards and will develop data to support additional regulatory controls that may be appropriate. All alternate treatment technologies modeled in this analysis were determined to be available alternatives to the land disposal of HOC-containing California list wastes. For all PCB-containing California list wastes, incineration to 99.9999 percent (six 9s) destruction and removal efficiency (DRE) was determined to be an available alternative to disposal in a landfill.

IV. Modifications to the Land Disposal Restrictions Framework

Today's final rule does two things. First, it addresses the land disposal of the second category of wastes scheduled for prohibition under RCRA section 3004, i.e., the "California list" wastes. Second, it modifies portions of the land disposal restrictions framework promulgated on November 7, 1986 (51 FR 40572). Unless otherwise specified (e.g. the unique waste analysis requirements codified in § 268.32), the modified framework applies to both California list wastes and all other restricted wastes. This section in today's final rule describes the substantive changes made in the framework and briefly discusses any unique requirements with respect to the California list wastes.

A. General Waste Analysis (§ 264.13 and § 265.13)

In the November 7, 1986 final rule (51 FR 40637–38), the Agency amended the general waste analysis provisions by requiring owners or operators to specify in their written waste analysis plans certain procedures and schedules for meeting the requirements of the § 268.4 treatment in surface impoundments exemption. In particular, § 264.13(b)(7)(iii) and § 265.13(b)(7)(iii) require the waste analysis plan to specify the procedures and schedules for complying with the RCRA section 3005(j)(11)(B) requirement to annually remove hazardous residues for subsequent management. In implementing the hazardous residue removal requirement, the Agency stated that such residues need not be delisted. Rather, EPA provided in § 268.4(a)(2) that the removal requirement could be satisfied if the residues which do not meet the Subpart D treatment standards are removed. The rationale for this approach is that since wastes meeting the treatment standards may be land disposed, such wastes should not be subject to the removal requirement.

Today's rule does not change the basic thrust of this approach. However, many of the California list wastes are subject to prohibition levels which are not expressed (at least as yet) as treatment standards. Similar to wastes that are treated to meet corresponding treatment standards, California list wastes treated to below the prohibition levels may be land disposed. Today's final rule revises § 268.4(a)(2) to provide that where no treatment standards have been established (e.g., for several of the California list wastes), residues not meeting the applicable prohibition levels are subject to the annual removal requirement. As a result, the waste analysis requirements are also revised accordingly. (Incidentally, such a residue could not be rendered nonliquid and then be placed back in an impoundment unless it also meets the specified prohibition level because it would become liquid again immediately upon placement in the impoundment.)

B. Purpose, Scope and Applicability of Part 268 (§ 268.1)

In § 268.1 of the November 7, 1986, final rule (51 FR 40638), the Agency stated that the Part 268 land disposal restrictions apply to generators, transporters, and owners or operators of treatment, storage, or disposal facilities. EPA also noted (51 FR 40577) that the land disposal restrictions apply to both interim status and permitted facilities.

Section 268.1 also contains certain exemptions from the land disposal prohibitions. Among these are exemptions for: (1) Wastes that are subject to successful case-by-case extensions pursuant to § 268.5; (2) wastes that are the subject of a successful "no migration" petition pursuant to § 268.6; (3) contaminated soil and debris resulting from a response action taken under section 104 or section 106 of CERCLA or resulting from a corrective action required under RCRA; and (4) wastes generated by small quantity generators of less than 100 kilograms of non-acute hazardous wastes per month or less than 1 kilogram of acute hazardous waste per month. These exemptions continue to apply.

The Agency notes that it omitted to cross-reference an existing regulatory exemption in proposing the California list rules. This is the exemption in 40 CFR 262.51 for a farmer disposing of waste pesticides from his own use on

his own farm in accordance with the disposal instructions on the pesticide label. There is no suggestion in RCRA or the legislative history that this practice, which can be similar to lawful application of a pesticide product, was intended to be subject to the land disposal prohibitions. The Agency discussed this omission in the June 11, 1987 notice of data availability and received no adverse comment. Therefore, today's final rule codifies this exemption in § 268.1(d) and revise § 262.51 accordingly.

EPA is not amending § 268.1 to exempt lab packs, as requested by some commenters. As the Agency stated in the November 7, 1986 final rule (51 FR 40584), lab packs remain subject to the land disposal restrictions because neither the legislative history nor the statute indicate that lab packs can be excluded from the land disposal restrictions if they contain restricted wastes in concentrations exceeding the applicable treatment standards or prohibition levels. In addition, liquid wastes contained in lab packs must comply with the Part 264 and Part 265 requirements regarding the placement of containerized liquids in landfills.

C. Definitions Applicable to this Part (§ 268.2)

As stated earlier in today's preamble, EPA is defining the California list constituents subject to the RCRA section 3004(d) prohibitions on land disposal. To avoid confusion in the regulated community over which wastes are subject to the section 3004(d) prohibitions, the Agency has codified several of these definitions in § 268.2. A more detailed discussion of the basis for these definitions appears in the earlier preamble sections addressing each constituent.

The Agency also notes that today's rule slightly revises the language defining the term "land disposal" to correct an ambiguity in the November 7, 1986 version of the definition. As revised, the definition clearly states that "land disposal" is "placement in or on the land" and that such placement need only be "for disposal purposes" when placement occurs in the concrete vault or bunker. See RCRA section 3004(k).

D. Dilution Prohibition (§ 268.3)

EPA proposed to amend the § 268.3 dilution prohibition promulgated on November 7, 1986 (51 FR 40639) to include dilution to avoid a prohibition in Subpart C of Part 268 (e.g., dilution to below the restrictions levels for the California list wastes) and dilution to circumvent the effective date of a Subpart C prohibition on land disposal. As proposed, these amendments to § 268.3 would apply to the entire land disposal restrictions program, and not just to the California list wastes. For example, a waste prohibited from land disposal as of November 8, 1986 because it contains greater than or equal to 1% total F001–F005 solvents could not be diluted to create a solvent waste containing less than 1% total F001–F005 solvent constituents in order to take advantage of the November 8, 1988 prohibition effective data applicable to the latter group of solvent wastes.

Most of the commenters supported the proposed amendments to the dilution prohibition; however, several expressed concern that solidification not be eliminated as a means of treating restricted hazardous wastes. They stated that solidification is treatment, not dilution, and should be allowed.

EPA is promulgating the amendments to the dilution prohibition as proposed; however, the Agency is clarifying that it agrees with the commenters that solidification—i.e., treatment that renders the waste nonliquid—is appropriate treatment in many cases. Therefore, legitimate solidification technologies are appropriate for use on the California list metal-bearing wastes, at least until treatment standards have been established for such wastes.

In the November 7, 1986 final rule (51 FR 40592), EPA noted that many treatment methods require the addition of reagents, but do not thereby constitute dilution. Addition of these reagents produces physical or chemical changes and does not merely dilute the hazardous constituents into a larger volume of waste so as to lower the constituent concentration. Where such physical or chemical changes do not occur, or where the hazardous constituents (e.g., metals) are not otherwise immobilized, "solidification" techniques may possibly be considered dilution as a substitute for adequate treatment within the meaning of the § 268.3 prohibition.

As a practical matter, even where solidification techniques are not considered dilution, the liquids in landfills prohibitions set forth in § 264.314 and § 265.314 remain applicable. These provisions place certain prohibitions on the use of absorbents. (See, for example, "Statutory Interpretative Guidance on the Placement of Bulk Liquid Hazardous Waste in Landfills," OSWER Policy Directive #9487.00–2A, June 11, 1986.)

EPA notes that once treatment standards are promulgated for the liquid metal-bearing wastes, solidification in and of itself will no longer be a permissible means of treatment to avoid a prohibition. Solidification will either have to achieve the treatment levels or, where treatment standards have been expressed as specified technologies, those technologies must be utilized. Where particular technologies have been specified, any treatment methods not specified in § 268.42 or approved under § 268.42(b) are not allowed. Thus, in today's final rule, the California list wastes containing PCBs must be treated using the specified thermal destruction technologies (i.e., incineration or burning in high efficiency boilers).

The Agency also notes here that, as stated earlier in today's preamble, legitimate aggregation of waste streams (e.g., wastewaters) to facilitate centralized treatment is not considered impermissible dilution. However, artificial aggregation of wastes to avoid a land disposal prohibition standard, or mixing substances that do not either themselves need to be treated or which do not aid in treatment, would be considered impermissible.

E. Treatment Surface Impoundment Exemption: Evaporation Prohibition (§ 268.4)

In addition to modifying the treatment residue removal requirement as described in section A of this unit in today's preamble, EPA is also revising § 268.4 to prohibit, in certain circumstances, the evaporation of hazardous constituents for purposes of obtaining an exemption allowing treatment of prohibited in surface impoundments. The Agency proposed this limitation because of its belief that only impoundments used to treat restricted wastes to reduce their toxicity or mobility, and not just to transfer hazardous constituents and their associated risks to other media (e.g., from the land to the air), should be eligible for the § 268.4 exemption.

A majority of the commenters supported the proposed prohibition, but several suggested that *de minimis* or other releases incident to treatment should be allowed. One commenter stated that EPA should focus on the risks of evaporation in defining the appropriate scope of the prohibition. The Agency agrees with the comments that *de minimis* evaporation incident to properly operated and effective treatment methods should be allowed in the context of today's final rule. Today's final rule thus states that evaporation of hazardous constituents as the principal means of treatment is not considered permissible treatment for purposes of a § 268.4 exemption.

In finalizing the proposed prohibition, EPA emphasizes that it is defining what

constitutes permissible "treatment" for purposes of section 268.4 and RCRA section 3005(j)(11). EPA agrees that evaporation risks should be evaluated but not in the context of today's final rule. The Agency is not determining in this final rule whether evaporation from such impoundments poses risks requiring control. This will be determined in the context of rules implementing RCRA section 3004(n). Rather, EPA is stating that impoundments which merely evaporate hazardous constituents are not engaging in an activity justifying receipt of prohibited wastes. This reading of the statute is a corollary to the prohibition on dilution: both evaporation as described above and dilution do nothing to remove, destroy, or immobilize contaminants as contemplated by RCRA. The thrust of the statutory provision in section 3005(j)(ll) is to grant a limited exemption for impoundments engaged in treatment which to some extent meet the objectives of section 3004(m), namely which reduce levels of toxicity or reduce the potential for hazardous constituents to migrate from the waste. Practices which do nothing more than transfer hazardous constituents to other media fail to satisfy this objective. Put another way, since placement of restricted wastes in surface impoundments is considered land disposal under RCRA section 3004(k) and § 268.2, the Agency does not believe that Congress intended to allow this exemption where impoundments are essentially engaged in land disposal, i.e., placement on the land followed by the evaporation of hazardous constituents. Therefore, today's final rule prohibits such evaporation as the "principal" means of treatment for purposes of a § 268.4 exemption.

An example of impermissible evaporation of hazardous constituents as the "principal" means of treatment is where the sole activity occurring in the impoundment is the volatilization of organic compounds into the ambient air. However, EPA recognizes that certain treatment practices include evaporation as a consequence of treatment (e.g., aggressive biological treatment) or involve emissions of hazardous constituents incident to other treatment. These practices are nonetheless legitimate treatment under § 268.4 because they destroy or immobilize hazardous constituents. (This is not to say that "aggressive" treatment is necessarily required in order to comply with § 268.4.)

The Agency is also clarifying its intent that evaporation of water or other compounds not on the list of "hazardous constituents" (in 40 CFR Part 261, Appendix VIII) is not addressed by today's final rule. Therefore, a treatment process involving the evaporation of water as the principal means of treatment is currently eligible for a § 268.4 exemption. For example, dewatering liquid metal-bearing wastes to concentrate metals for recovery or further treatment is acceptable under today's final rule.

F. Case-by-Case Extensions (§ 268.5)

In § 268.5 of the November 7, 1986 final rule (51 FR 40639), EPA established procedures for obtaining case-by-case extensions to a prohibition effective date pursuant to the authority of RCRA section 3004(h)(3). One requirement in § 268.5 for obtaining such extensions is that the applicant demonstrate that he has entered into a binding contractual commitment to construct or otherwise provide treatment, recovery, or disposal capacity that meets the applicable treatment standards. The rationale for this requirement is that Congress intended to encourage the development of alternative capacity by accommodating those making a good faith effort to comply with the prohibitions by the effective date but who are unable to do so due to circumstances beyond their control. (See S. Rep. No. 284, 98th Cong., 1st Sess. 19 (1983).) The basic thrust of this approach is not changed by today's final rule; however, the Agency has recognized that applicants cannot demonstrate a binding contractual commitment to provide capacity meeting treatment standards where no treatment standards have been established (e.g., for several of the California list wastes). Therefore, EPA is revising § 268.5 to require that, where no treatment standards have been established, the capacity being provided must meet the underlying statutory standard of being protective of human health and the environment.

Two other modifications to § 268.5 are also being promulgated in today's final rule, both of which deal with how prohibited wastes subject to a case-by-case extension may be managed during the period of such an extension. On November 7, 1986, EPA stated that such wastes may be placed in landfills or surface impoundments provided certain minimum technological requirements are met. Section 268.5(h)(2) references the applicable minimum technological requirements specified in Part 264 and Part 265; however, § 265.221 does not contain a reference to the RCRA section 3005(j)(1) provision stating that existing interim status surface impoundments must be in compliance with the minimum technological requirements applicable to new impoundments by November 8, 1988. Although the Agency has not codified this statutory requirement, it remains applicable. In order to clarify the regulated community's obligations, however, today's final rule references the RCRA section 3005(j)(1) requirement in § 268.5(h)(2).

Another modification to § 268.5(h)(2) is made in today's final rule with respect to the disposal of California list PCB-containing wastes that are subject to a case-by-case extension. In order to integrate the TSCA and RCRA requirements, a new paragraph (h)(2)(v) is added which states that a landfill disposing of such PCB-containing wastes during the period of an extension must be in compliance with both the TSCA regulations for chemical waste landfills at 40 CFR 761.75 (PCB wastes at 50 ppm or greater may not be placed in surface impoundments under the TSCA regulations) and the Part 264 and 265 requirements. This modification has been made to ensure that the more stringent of the two sets of requirements apply.

G. "No Migration" Petitions to Allow Continued Land Disposal (§ 268.6)

In the November 7, 1986, final rule (51 FR 40640), EPA established procedures for granting petitions allowing prohibited wastes to be land disposed where applicants can demonstrate, to a reasonable degree of certainty, that there will be "no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous." RCRA sections 3004 (d), (e), and (g). Today's final rule does not change the procedures established in § 268.6; however, the exemption is being limited by excluding certain PCB-containing wastes from eligibility for such exemptions.

Current TSCA regulations require that liquid wastes containing PCBs at concentrations greater than or equal to 500 ppm be incinerated according to 40 CFR 761.70 standards. In order to avoid the possibility of circumventing this TSCA requirement, EPA is revising § 268.6 to provide that liquid hazardous wastes containing PCBs at concentrations greater than or equal to 500 ppm are not eligible for such "no migration" exemptions. Although this limitation was not specifically discussed in the December 11, 1986 proposal, the Agency did state (51 FR 44723) that where there is an inconsistency between TSCA and RCRA standards, the more stringent requirements govern. Today's modification to § 268.6 simply codifies an existing TSCA standard within the

RCRA regulations in order to facilitate compliance by the regulated community.

H. Waste Analysis and Recordkeeping (§ 268.7)

In the November 7, 1986, final rule (51 FR 40597), EPA acknowledged that the ultimate responsibility is on land disposal facilities to ensure that prohibited wastes are not illegally disposed. However, the Agency also recognized that a testing and tracking scheme is critical to implementation and, as a result, imposed certain waste analysis, notice and recordkeeping requirements on generators and treatment facilities, as well as land disposal facilities. These requirements, as specified in § 268.7 and set forth in the Agency's recent correction notice (52 FR 21010, June 4, 1987), are not substantially modified in today's final rule.

Generators remain responsible for determining whether their wastes are restricted from land disposal and may continue to make this determination based on knowledge of their waste, testing, or both. A unique aspect of today's final rule is that, when testing, the Toxicity Characteristic Leaching Procedure (TCLP) is not required for the California list wastes. Rather than testing an extract developed using the TCLP (as is required for the solvents and dioxins to determine if wastes meet the applicable treatment standards), § 268.32 specifies the relevant portion of the waste to test, i.e., the entire waste and not a leach extract for HOCs, PCBs, and corrosives. Other revisions to § 268.7 involve modifications and the notice and certification provisions to require reference to the applicable prohibition levels where no treatment standards are established. The remainder of § 268.7 is unchanged.

I. Waste Specific Prohibitions—California List Wastes (§ 268.32)

The primary focus of today's rule is on codifying statutory land disposal prohibitions, establishing effective dates, and, for certain California list wastes, promulgating treatment standards. Today's final rule adds a new § 268.32 which contains the prohibitions and effective dates. The unique waste analysis requirements for these wastes are also included in § 268.32.

Prohibitions and effective dates for the California list metal and free cyanide containing wastes are not included in today's final rule. These determinations will be made in a separate rulemaking. In the interim, the statutory prohibitions in RCRA section 3004(d)(2)(B) are applicable and today's preamble discusses the Agency's approach to determining compliance with the statutory prohibitions. In addition, § 268.32 (and § 268.42) are revised to state that the California list prohibitions, treatment standards, and effective dates for HOCs are superseded by more specific Agency determinations regarding treatment standards and prohibition effective dates (e.g., any determinations already made for solvent-containing and dioxin-containing wastes on November 7, 1986, or any determinations to be made according to the May 28, 1986 schedule. (51 FR 19300)).

The rationale for this approach is that EPA has recognized (51 FR 44725) that it is difficult to establish prohibitions and treatment standards for the broad and diverse categories of wastes specified on the California list. In both the December 11, 1986 proposal (51 FR 44715) and today's final rule, EPA has noted that Congress intended the California list prohibitions to serve as a starting point in carrying out the congressional mandate to minimize land disposal of hazardous waste. Therefore, as the Agency develops data on particular waste streams, it will promulgate prohibitions, treatment standards, and effective dates that will supersede those promulgated today.

J. Treatment Standards Expressed as Specified Technologies (§ 268.42)

Today's final rule establishes treatment standards expressed as specified technologies for the California list wastes containing HOCs (except dilute HOC wastewaters) and those containing PCBs. The technologies specified in § 268.42(a) are thermal treatment methods currently subject to existing regulations and are discussed in more detail in today's preamble section entitled "Treatment Standards." Because the PCB wastes subject to these treatment standards are mixed with RCRA hazardous wastes, the Agency is reiterating in § 268.42(a)(1) that compliance with both the TSCA and RCRA standards is required in treating such wastes. This will ensure that today's treatment standards do not result in reducing the stringency of existing treatment requirements for PCB wastes or RCRA hazardous wastes.

EPA is also clarifying two aspects of § 268.42(b). As promulgated on November 7, 1986 (51 FR 40642), this provision allows the Administrator to approve the use of alternative treatment methods provided an applicant can demonstrate that such alternatives can achieve a measure of performance equivalent to that achievable by methods EPA has specified. A further demonstration must be made that the alternative treatment method does not pose an unreasonable risk to human health or the environment.

One commenter suggested that such equivalency petitions may only be granted through rulemaking after notice and public comment. The Agency does not fully agree. Such a determination could be made in such a way as not to have general applicability and effect, and so amount only to an individualized variance. The Agency does not believe that in such instances rulemaking procedures necessarily are required. To the extent, however, that Agency action on an equivalency petition would have general applicability and effect (for example, indicating that a technology constituted an equivalent technology for classes of wastes and generators), then rulemaking procedures would be appropriate. The EPA would make this determination when evaluating each petition. The language in § 268.42(b) therefore should not be read to require use of rulemaking procedures in every case.

The Agency is removing the language in § 268.42(b) requiring petitioners to demonstrate that their treatment method does not pose an "unreasonable risk." This standard is drawn from the Toxic Substances Control Act (TSCA) and is inappropriate for a RCRA determination. EPA is substituting the RCRA standard which requires a demonstration that the alternative treatment method is "protective of human health and the environment." To the extent that the equivalency petition is made with respect to PCB-containing wastes also regulated under TSCA, the applicant would also have to satisfy the "unreasonable risk" standard contained in 40 CFR 761.60(e) as part of the demonstration required independently under the TSCA regulations. The remainder of the § 268.42(b) framework continues to apply.

K. Prohibitions on Storage of Restricted Wastes (§ 268.50)

Today's final rule does not modify the framework for prohibiting storage of restricted wastes; however, two revisions are being made that are unique to the California list wastes. First, the applicability provision in § 268.50(e) is being modified to account for wastes for which treatment standards are not specified (e.g., several of the California list wastes). As promulgated on November 7, 1986 (51 FR 40642), this provision exempted from the storage prohibitions any wastes meeting the applicable treatment standards, i.e., wastes that are not prohibited from land disposal. Today's revisions to § 268.50(e)

simply extend this principle to wastes that are not prohibited from land disposal but for which treatment standards are not specified.

Section 268.50 is also being revised to incorporate an existing TSCA PCB storage prohibition into the RCRA regulations in order to integrate the two sets of requirements and facilitate compliance by the regulated community. Existing TSCA regulations at 40 CFR 761.65(a) require that wastes containing PCBs at concentrations greater than or equal to 50 ppm be removed from storage and disposed within one year from the date when they were first placed into storage. The RCRA regulations in § 268.50, however, allow storage of restricted wastes in tanks or containers where such storage is "solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal." Despite some confusion in the regulated community, § 268.50 does not establish a firm time limit on allowable storage of restricted wastes. Section 268.50 merely shifts the burden of demonstrating compliance (or lack thereof) when restricted wastes are stored beyond one year. Storage violations may occur within one year, or storage may be allowable beyond one year, depending on the reasons for such storage. Absent a modification to § 268.50 for the California list PCB wastes, the open-ended RCRA storage prohibition could circumvent the flat one-year limit imposed by the TSCA regulations. Therefore, today's final rule revises § 268.50 to require that the California list PCB wastes may only be stored in accordance with the § 268.50 requirements, but that such storage is limited to one year. For the convenience of the regulated community, today's rule also revises § 268.50 to incorporate the § 761.65(b) provision requiring certain physical characteristics at such PCB storage facilities (e.g., adequate roofing, walls, and floors with curbing).

L. Minor Modifications of Permits and Changes During Interim Status (§ 270.42 and § 270.72)

On December 11, 1987, the Agency proposed two amendments to the requirements in Part 270 to give facilities the ability to change their operations to treat or store restricted wastes in tanks or containers as necessary to comply with the Part 268 land disposal restrictions. For permitted facilities it was proposed that such changes could be approved through the minor modification process under certain conditions. It was also proposed that these expansions at interim status facilities would not be subject to the reconstruction ban. The following two sections discuss the comments received on the proposed approach and a description of the provisions contained in today's final rule.

1. Minor Modifications of Permits (§ 270.42)

All comments received on the proposed amendment to the minor permit modification regulations supported the proposed approach. Commenters indicated that the use of minor modifications would be essential to allow facilities to respond promptly and effectively to the land disposal restrictions. The Agency agrees with the commenters and is promulgating § 270.42(p) essentially as proposed.

Specifically, this provision will allow permitted facilities to use the minor modification process in obtaining approval to make changes as needed to treat or store restricted wastes in tanks or containers in order to comply with Part 268 land disposal restrictions, provided the permittee complies with the following conditions: first, the owner or operator must submit a complete major permit modification application pursuant to §§ 124.5 and 270.41; second, the applicant must demonstrate that changes in a unit to treat or store restricted wastes in tanks or containers are necessary to comply with the land disposal restrictions of Part 268; and third, the applicant must ensure that such units comply with the applicable Part 265 standards until the major modification request is granted or until Part 265 closure and post-closure responsibilities are fulfilled. For example, any tanks used to treat or store restricted wastes would be subject to the tank system standards of Part 265, Subpart J, which include secondary containment requirements for new tanks (see 51 FR 25422, July 14, 1986). The authorization to continue in operation with the changes terminates upon final administrative disposition of the major modification request or the termination of the permit.

One commenter suggested that the minor modification provision should be expanded to include units other than tanks and containers. As stated in the preamble to the proposal, EPA believes that the addition of other treatment processes, such as incineration, is likely to raise issues that would be best addressed through the major modification process. However, the Agency is exploring these issues as part of an overall review of the permit modification regulations. EPA recently completed regulatory negotiations on permit modifications, and expects to issue a proposed rule in the next several months.

2. Changes During Interim Status: Removal of Reconstruction Limits (§ 270.72)

The Agency proposed to allow interim status facilities to modify their operations to treat or store restricted wastes in tanks or containers as necessary to comply with the land disposal restrictions without being required to obtain a permit even if such changes exceed the reconstruction limits. Current regulations at § 272.72(e) require owners or operators of interim status facilities that may need to expand the facility by more than 50 percent (in terms of capital investment) to defer such changes until a permit is issued.

Virtually all of the commenters supported the proposed approach to waive the 50 percent reconstruction limits for interim status facilities. They further commented that delaying such necessary changes to the facility until a permit is issued could present significant operational difficulties at the facility. The Agency, therefore, is amending §270.72(e) essentially as proposed to allow owners or operators to modify interim status facilities to handle wastes restricted from land disposal without being subject to the 50 percent capital expenditure limit. Pursuant to today's final rule, interim status facilities would be required to file a revised Part A application prior to such changes. Applicants must also demonstrate that the changes were necessary to comply with the land disposal restrictions of Part 268. Facilities allowed to expand their operations by more than 50 percent under today's final rule continue to be subject to the Part 265 standards.

V. Effects of the Land Disposal Restrictions Program on Other Environmental Programs

As an alternative to using BDAT treatment, the regulated community might dispose of restricted California list wastes using non-RCRA disposal options. Two options regulated under the Marine Protection, Research, and Sanctuaries Act (MPRSA) (33 U.S.C. 1401) are ocean dumping and ocean-based incineration. The Agency conducted an analysis of the potential shift in demand for these options resulting from the restrictions on land disposal of solvent, dioxin, and California list wastes. The results are described in "Assessment of Impacts of Land Disposal Restrictions on Ocean Dumping and Ocean Incineration of Solvents, Dioxins, and California List

Wastes." (U.S. EPA, 1986). This assessment was based on a methodology to score and rank waste streams for relative acceptability for ocean disposal, based on technical requirements, environmental criteria, and, to a limited extent, risk to human health and the environment. This analysis was supplemented with an analysis of cost factors and capacity constraints.

The scoring/ranking methodology was based on technical requirements (e.g., physical form and heating value) and MPRSA environmental criteria (e.g., constituent concentrations, toxicity, solubility, density, and persistence of the waste) associated with ocean disposal of hazardous waste. The capacity analysis assumed that those wastes least acceptable for ocean disposal will be treated or disposed of by land-based methods. The cost analysis assumed that additional land-based treatment capacity would be built to treat waste streams for which the costs of land-based treatment would be less than the costs of ocean disposal (including on-land transportation to a port located on the East Coast).

The results of the cost/capacity analysis indicated that, as a result of the land disposal restrictions, approximately 20.3 million gallons per year of hazardous waste containing HOCs, 15.1 million gallons per year of liquid hazardous wastes containing metals, and 8.2 million gallons per year of liquid hazardous wastes containing PCBs could create demands for ocean dumping and ocean-based incineration. Such demands result from capacity shortfalls of land-based treatment (e.g., incineration and chemical precipitation) and the relatively lower cost of ocean dumping and ocean-based incineration, taking into account the costs of transportation on land. The cost/capacity analysis did not take into account technical requirements or environmental criteria.

The Agency expanded the cost/capacity analysis to evaluate the wastes based on cost, capacity, technical requirements and MPRSA environmental criteria, and to a limited extent, risk to human health and the environment. The results of that analysis indicated that ocean disposal of some of these waste streams may incur risks to the marine environment. Clearly, potential risks will influence whether or not ocean dumping permits, for example, would be issued for the affected waste streams. However, under present statutory authorities, with the exception of certain specified wastes, EPA may not disapprove ocean dumping of a hazardous waste for failure to comply with one or more environmental criteria. EPA must consider all statutory factors under section 102(a) of the MPRSA in its decision-making on permit issuance, not just compliance with environmental criteria. Consequently, EPA will have to make case-by-case decisions on whether such permits will be issued for hazardous waste streams prohibited from land disposal.

VI. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013 and 7003, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits that the State was authorized to issue. When new, more stringent, Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)) new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's rule is promulgated pursuant to sections 3004(d) through (k), and (m), of RCRA (42 U.S.C. 6924), provisions added by HSWA. Therefore, it is being added to Table 1 in 40 CFR 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table 1, as discussed in the following section. The Agency is modifying Table 2 in § 271(j) also to indicate that this rule pertains to the self-implementing statutory provision of the RCRA amendments.

B. Effect on State Authorizations

As noted above, EPA will implement these regulations in authorized States until States modify their programs to adopt the regulations and the modification is approved by EPA. Because these rules are promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 1993 (see § 271.24(c)).

Section 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes, and to subsequently submit the modifications to EPA for approval. The deadline by which the State must modify its program to adopt today's rule is July 1, 1991 (July 1, 1992, if a State statutory change is necessary). These deadlines can be extended in certain cases (see § 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards are a matter of State law. In implementing the Federal program EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these

standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadlines set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. Section 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

C. State Implementation

There are several unique aspects of today's rule which affect State implementation and impact State actions on the regulated community:

1. Under 40 CFR Part 268, Subpart C, EPA is promulgating nationwide land disposal restrictions for all generators and TSDFs of certain types of hazardous waste. In order to retain authorization, States must adopt the regulations under this Subpart, since State requirements cannot be less stringent than Federal requirements.

2. Under § 268.32, the Agency may grant a national capacity variance to the prohibition effective date for up to two years if it is found that there is insufficient alternative treatment capacity. Under § 268.5, case-by-case extensions to the effective date of up to one year (renewable for an additional year) may be granted for specific applicants lacking adequate capacity.

EPA Headquarters is solely responsible for granting such extensions. It is clear that RCRA section 3004(h)(3) intends for the Administrator to grant such extensions after consulting the affected States, on the basis of national concerns that only the Administrator can evaluate. Therefore, this aspect of the program cannot be delegated to the States.

3. Under § 268.42(b) and § 268.44, the Agency may grant a waste-specific variance from a treatment standard in cases where it can be demonstrated that the physical or chemical properties of the waste differs significantly from wastes analyzed in developing the treatment standard, and, the waste cannot be treated to specified levels or by specified methods.

The Agency is solely responsible for granting such variances since the result of such an action will be the establishment of a new waste treatability group. Wastes meeting the criteria of this newly established waste treatability group may also be eligible for the variance. Thus, granting such a variance could have national impacts. Therefore this aspect of the program cannot be delegated to the States.

4. Under § 268.6, EPA may grant petitions of specific duration to allow land disposal of certain hazardous waste where applicants can demonstrate that there will be no migration of hazardous constitutents from the disposal unit or injection zone for as long as the waste remains hazardous.

States that have the authority to impose land disposal prohibitions may be authorized under RCRA section 3006 to grant petitions for such exemptions. Decisions on site-specific petitions do not require the national perspective required to grant extensions or variances from the treatment standard. The Agency expects few "no migration" petitions, therefore, EPA is currently requiring that these be handled at EPA Headquarters, though the States may be authorized to grant these petitions in the future. Also, since the Agency has had few opportunities to implement the newly promulgated land disposal restrictions, the Agency expects to gain valuable experience and information from review of "no migration" petitions that may affect future land disposal restrictions rulemakings. In accordance with RCRA section 3004(i), EPA will publish its determination that the "no migration" demonstration has been made in the **Federal Register.**

States are free to impose their own land disposal prohibitions if they are more stringent or broader in scope than Federal programs (RCRA section 3009 and 40 CFR 271.1(i)). Where States impose such prohibitions, the broader or more stringent State ban governs and EPA's action is without meaning in the State.

VII. Regulatory Requirements

A. Regulatory Impact Analysis

Executive Order 12291 requires EPA to assess the effect of contemplated Agency actions during the development of regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order 12291 requires that regulatory agencies prepare an analysis of the regulatory impact of major rules. Major rules are defined as those likely to result in:

1. An annual cost to the economy of $100 million or more; or

2. A major increase in costs or prices for consumers or individual industries, or

3. Significant adverse effects on competition, employment, investment, innovation, or international trade.

The Agency has performed an analysis of today's regulation to assess the economic effect of associated compliance costs. Total costs of restrictions on affected wastes are expected to be $93.7 million per year. Although the rule does not constitute a major rule under Executive Order 12291, EPA has nonetheless prepared a formal regulatory impact analysis of today's regulatory action in recognition of the effect of the rule on a broad spectrum of American industry.

The remainder of this section describes the analyses performed by EPA in support of today's rule affecting all California list wastes identified in section 3004(d)(2) of the Resource Conservation and Recovery Act (RCRA).

1. Cost and Economic Impact Methodology

EPA has assessed the costs, benefits and potential economic effects of this rule and of major regulatory alternatives to it. In the final rule, EPA has specified treatment standards or concentration levels for each of the five waste groups identified as part of the California list. For the corrosive wastes, EPA is codifying the statutory prohibition specified in section 3004(d)(2) of RCRA. For the PCB and most HOC wastes, EPA has specified treatment standards as described earlier in today's preamble. Finally, for the liquid hazardous wastes containing the specified metals and free cyanides, EPA is deferring to the statutory levels at this time.

In addition to assessing the regulation itself, the Agency has examined major regulatory alternatives to it. This preamble presents results for the final rule only. Each of the alternatives is explored in detail in the Regulatory Impact Analysis (RIA) that is available for viewing in the docket.

EPA establishes the total costs and economic impacts of this rule in three steps. First, EPA estimates the population of wastes, facilities and waste management practices that will be affected. Next, it derives the total social costs of the regulation by adding costs for individual facilities. Finally, EPA assesses economic impacts on affected facilities by comparing total costs for individual facilities to standard measures of facility financial vitality.

a. *Affected population and practices.* The affected population is the total number of hazardous waste treatment, storage and disposal facilities (TSDFs) and generators land disposing of California list wastes either directly at the generation site or indirectly through the purchase of commercial land

disposal capacity. This group's waste management practices are assessed to identify baseline costs of managing wastes and incremental cost increases attributable to today's rule.

The number of facilities that land dispose of affected wastes was determined using the EPA's 1981 Regulatory Impact Analysis Mail Survey.[3] Waste quantities and management costs for facilities responding to the Mail Survey are scaled up to represent the national population by means of weighting factors developed within the survey. EPA estimates that 339 facilities comprise the total national population of commercial and noncommercial facilities land disposing of California list wastes on-site, excluding RCRA wastes mixed with polychlorinated biphenyls (PCBs). This estimate is based on 1981 survey data adjusted for intervening regulatory requirements.

EPA estimates that an additional 2,162 plants generate more than 1,000 kilograms per month of wastes that are sent off-site for management. The waste is disposed of either by noncommercial TSDFs (e.g., those owned by the firm generating the waste but at a different location), or by a commercial TSDF.

Generators of less than 1,000 kilograms per month were not included in the 1981 survey because they were considered exempt at that time. However, the 1984 amendments to the Solid Waste Disposal Act directed EPA to lower the exemption for small quantity generators (SQGs) from 1,000 to 100 kilograms per month by March 31, 1986, so SQGs generating between 100 and 1,000 kilograms of waste per month for off-site disposal are also included in the affected population. The Agency estimates that these SQGs add 2,046 plants to the affected population. Plant- and waste-specific data on this group are derived from EPA's Small Quantity Generator Survey.[4]

Because PCBs are not themselves a listed RCRA hazardous waste, data on generators of PCBs mixed with hazardous wastes regulated under RCRA were not specifically gathered in the RIA Mail Survey. However, recently developed data on this group indicate that there are approximately 63 generators of mixed PCB/RCRA hazardous wastes.[5]

EPA's characterization of current management practices for these groups includes the cost of compliance with regulations that have taken effect since the 1981 survey was conducted. In particular, EPA has adjusted waste management practices reported to reflect compliance with the provisions of 40 CFR Part 264. In making this adjustment, the Agency assumes facilities elect the least costly methods of compliance. This adjustment defines not only baseline management practices and costs associated with them, but also the number of waste streams in the affected population. For example, for 16 facilities, the costs of land disposing certain wastes are driven so high by regulations predating this final rule that other management modes are less expensive. EPA assumes that these facilities no longer land dispose these wastes and that these wastes are therefore no longer part of the population of waste streams that may be affected by any restrictions on land disposal.

No aggregate models have been developed for the population of treatment, storage, and disposal facilities and small quantity generators examined in this analysis. Instead, individual observations in the data sources have been weighted to represent the national population of wastes and management practices. For generating plants disposing of large quantities of California list wastes off-site, model plants representing average, maximum, and minimum waste quantities were developed to assess the range of potential economic effects. For generators of mixtures of PCBs and RCRA hazardous wastes, economic effects were assessed using model plants representing typical waste quantity and plant size characteristics.

b. *Development of costs.* Once the waste quantity and the type and method of treatment are known for the affected population, EPA estimates the costs of compliance for individual facilities. The analysis detailed in this section is based on cost estimates for surveyed facilities representing the affected population. EPA estimates baseline and compliance waste management costs using engineering judgment. Wastes amenable to similar types of treatment are grouped to identify economies of scale available through co-treatment and disposal.

EPA developed baseline waste management costs by adjusting 1981 waste management practices to reflect compliance with regulatory requirements predating restrictions on land disposal. Costs for disposal in surface impoundments assume compliance with section 3005(j) of RCRA, which requires surface impoundments to fully retrofit with double liners and leachate collection systems between liners (subjects to certain exemptions). This assumption could lead to an overestimate of baseline disposal costs and, thus, to an underestimate of incremental costs for surface impoundments exempted from these requirements. Existing regulatory requirements are also considered in developing costs for disposal in landfills and waste piles.

Facilities face several possible options if they may no longer land dispose their wastes. EPA applies the same rationale in predicting facility choice among these options as it does in establishing the affected population: facilities are assumed to elect the least costly method of complying with the requirements of this rule. Costs of compliance are derived by predicting the minimum-cost method of compliance with land disposal restrictions for each facility and calculating the increment between that and baseline disposal costs. As in the analysis of baseline costs, economies of scale in waste management are considered.

Shipping costs for wastes sent off-site for management are also considered. In the development of baseline waste management costs, the transportation distance assumed for off-site waste treatment and/or disposal is 100 miles. Most plants now sending wastes off-site do so for disposal. Although the likely effect of restrictions will be to require treatment before and in addition to disposal, the Agency has not increased the assumed transportation distance. This implies that plants now sending wastes off-site for disposal only can also purchase treatment services from the same commercial facilities. Even if the assumption that average transportation distances will not increase does not accurately predict the effects of this rule, EPA's examination of the sensitivity of results to this assumption revealed that varying the assumption in travel distances, even by as much as a factor of eight, has a

[3] EPA conducted the RIA Mail Survey of hazardous waste generators and TSDFs to determine waste management practices in 1981. Facilities that handled less than 1,000 kilograms of waste per month were not regulated in 1981 and thus are not included in the data. For more information see the "National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated under RCRA in 1981." Because the 1981 survey was a statistical sample and not a census, updating it with more current information available to the Agency from other sources is difficult. Based on these sources, however, EPA believes that this estimate may overstate the actual number of TSDFs now land disposing of California list waste.

[4] Office of Solid Waste, "National Small Quantity Hazardous Waste Generator Survey," February 1985.

[5] Office of Solid Waste, "Characterization of Mixed PCB/RCRA Hazardous Wastes," February 1985.

minimal effect on results. This is because many plants that send wastes off-site send small amounts, and economies of scale, reflected in per-unit prices of waste disposal at large commercial facilities, outweigh even major increases in shipping costs.

EPA developed facility-specific compliance costs in two components, which are weighted and then summed to estimate total national costs of the rule. The first component of the total compliance cost is incurred annually for operation and maintenance of alternative modes of waste treatment and disposal. The second component of the compliance cost is a capital cost, which is an initial outlay incurred for construction and depreciable assets. Capital costs are restated as annual values by adjusting them into equivalent yearly payments using a capital recovery factor based on a real cost of capital of 7 percent. These annualized capital costs are then added to yearly O&M costs to derive an annual equivalent cost.

c. *Economic impact analysis*—i. *Noncommercial TSDFs and SQGs.* EPA assesses economic impacts on non-commercial TSDFs and SQGs in several steps. First, the Agency employs a general screening analysis to compare facility-specific incremental costs to financial information about firms, disaggregated by Standard Industrial Classification (SIC) and number of employees per facility. This comparison generates two ratios, which EPA uses to identify facilities likely to experience adverse economic effects. The first is a ratio of individual facility compliance costs to costs of production. This ratio represents the percent product price increase for facility output that occurs if the entire compliance cost—accompanied by facility profit—is passed through to customers in the form of higher prices. A change exceeding five percent is considered to imply a substantial adverse economic effect on a facility. The second is a coverage ratio relating cash from operations to costs of compliance. This ratio represents the number of times that facility gross margin covers the regulatory compliance cost if the facility fully absorbs the cost. For this ratio, a value of less than 20 is considered to represent a significant adverse effect. The coverage ratio is the more stringent of the two ratios, but exceeding the critical level in either one suggests that a facility is likely to be significantly affected. These ratios bound possible effects on individual firms. This analysis considers only pre-tax costs, because Census data are stated in before-tax terms.

Once facilities experiencing adverse economic effects are identified using the two screening ratios, more detailed financial analysis is performed to verify the results and to focus more closely on affected facilities. For this subset of facilities, the coverage ratio is adjusted to allow a portion of costs to be passed through. Economic effects on individual facilities are examined assuming that product price increases of one and five percent are possible. Those facilities for which the coverage ratio is less than two are considered likely to close.

ii. *Commercial TSDFs.* Commercial TSDFs are here defined as those facilities that accept fees in exchange for management of wastes generated elsewhere. For this group of facilities, there exists no Census SIC from which to draw financial information. Two SICs that EPA might use as proxies, 4953 and 4959, do not distinguish between financial data for hazardous waste treatment firms and for firms managing municipal and solid wastes. Consequently, the analysis of economic effects on commercial facilities is qualitative. This analysis includes an examination of the quantity of waste each facility receives from the waste group restricted by today's rule. EPA also examines the ability of each facility to provide the additional treatment required once these restrictions are promulgated, and thus to retain or expand that portion of its business generated by restricted wastes.

iii. *Generators of large quantities of wastes.* EPA's analysis of the economic effects of this rule on generating plants disposing of large quantities of affected wastes off-site assumes that commercial facilities can entirely pass on the costs of compliance with this regulation in the form of higher prices for waste management services. Because of data limitations in the RIA Mail Survey, EPA has not developed plant-specific characterizations of wastes, treatment methods, and compliance costs for generators, as it has for TSDFs. EPA's analysis of the economic effects of today's final rule on this group uses RIA Mail Survey data to develop model plants generating average, maximum, and minimum waste quantities. This allows EPA to assess the range of possible effects on generating plants.

2. Costs and Economic Impacts

Total costs of regulating California list wastes do not qualify this rule as a major rule under Executive Order 12291, since the total annualized costs of restricting land disposal of these wastes are estimated at $93.7 million per year. These costs are not adjusted for the effect of taxation, which is merely a transfer from one sector of the economy to another. Costs are stated in 1986 dollars.

Today's regulation will affect entities in a variety of four-digit SICs, including chemicals and allied products, petroleum products, and metals industries. Two SIC sectors, chemicals and allied products (SIC 28) and primary metals (SIC 33) together account for approximately three-fourths of the after-tax cost of complying with the land disposal restrictions.

Economic effects have been assessed for both noncommercial and commercial facilities. Noncommercial facilities are those that generate and manage their own wastes, as distinct from facilities that accept fees in exchange for managing and disposing of wastes generated by others. Of 308 (weighted) noncommercial facilities nationally, 39 (weighted) facilities may experience financial distress because of this rule, and six of these appear likely to close.

EPA estimates that 31 (weighted) commercial facilities will incur incremental costs as a result of the restriction on land disposal of California list wastes. Fifty-eight percent of these commercial facilities offer a range of hazardous waste management services, including land-based disposal, storage, and treatment. The increased demand this rule will create for highly priced treatment services may actually strengthen the financial position of these firms by allowing them to increase their market shares. On the other hand, for the 16 percent of commercial facilities that offer solely land-based management of restricted wastes, the increased emphasis on treatment prior to land disposal may prove economically disadvantageous. It was not possible to characterize the remaining 26 percent of commercial facilities based on services offered.

Turning to effects on generators, EPA found that based on average waste quantities, the SIC sectors generating California list wastes include 2,162 (weighted) plants. Of these, 34 (weighted) plants may experience significant financial distress based on costs imposed by restrictions on land disposal. This represents 1.6 percent of all waste-generating plants that may face increased waste management prices. Based on further analysis, none of the 34 distressed plants appear likely to close.

Total annualized national costs for the 2,046 (weighted) small quantity generators (SQGs) of California list wastes are $4.5 million. Based on engineering estimates of prices for off-site waste management services, costs

for SQGs generating the maximum of 1,000 kilograms per month of nothing but hazardous wastes specified in the California list would incur not more than $13,200 annually in incremental compliance costs. Economic ratios for all plants in each 4-digit sector represented in the SQG survey were examined. In 102 (weighted) cases, plants seemed likely to experience some financial distress, and none of these plants appear likely to close. Thus, restricting land disposal of California list wastes may have substantial adverse economic effect on approximately 5 percent of all generators of small quantities of wastes.

Economic effects on generators of mixed PCB/RCRA wastes are also not expected to be significant; although, because of data limitations, no plant-specific analysis could be undertaken. Further information on economic effects on all groups mentioned above is available in the regulatory impact analysis (RIA) supporting this rule.

The following table summarizes the economic impact information presented above:

Type of firm	No. of firms	Significantly impacted
Noncommercial	308	39
Small Quantity Generators	2,046	102
PCB Generators	63	0
Large Quantity Generators	2,162	34
Commercial TSDFs [1]	31	—
Totals	4,610	175

[1] Because of the assumption of full cost pass-through by commercial TSDFs, no economic effects are identified for this group.

3. Methodology Used in Assessing Benefits and Cost-Effectiveness

The RIA performed by the Agency evaluated the benefits of three regulatory alternatives for restricting the land disposal of California list wastes. As with the discussion of cost and economic impacts, this preamble only presents results associated with the final rule.

The benefits of today's final rule were evaluated by considering the reduction in human health risk that results from treating California list wastes to below statutory levels prior to land disposal rather than managing by baseline land disposal practices. Human health risk is defined as the probability of injury, disease, or death over a given time due to responses to doses of disease causing agents. Predicting human health risk entails estimating quantitatively the consequences of human exposure to these agents. To estimate risks of baseline and alternative technologies, the analysis characterizes wastes, technologies, releases, environmental transport, and dose-response relationships based on a number of simplifying assumptions. These include:

—The steady-state management and release of wastes—in other words, the quantity of waste managed in the baseline continues to be managed—and subject to releases—ad infinitum;
—Exposure to contaminated media is steady-state;
—The dose results from daily consumption of surface and ground water, inhalation of air, and ingestion of contaminated fish over 70 years by a 65 kg person;
—The dose-response relationship for carcinogens is linear, without a threshold; for noncarcinogens it is a modified linear response;
—Risks are based on exposures to all constituents in each waste stream; and
—Risks are not discounted.

The human health risk posed by a waste management practice is a function of complex interactions between the toxicity of the chemical constituents in the waste stream and the extent of human exposure to these chemicals (e.g., considering, among other things, the hydrogeologic settings at land disposal units and the fate and transport of chemical constituents of wastes).

EPA estimates human health risk in four steps. The first step is to estimate the concentrations of each of the hazardous constituents of the waste stream in each of the three media (air, surface water, ground water) into which they may be released in the course of waste management. These estimates depend on the steady-state release rates calculated for each technology, and on environmental fate and transport. The next step is to estimate the total human intake, or dose, of each of the chemicals through inhalation of air and ingestion of ground water, surface water, and contaminated fish. The Agency next calculates the risk to an individuals from the dose derived in the previous step. EPA estimates the relationship of dose to effect (using the "dose-response" curve developed based on toxicity data), and weights the effect according to severity. Finally, EPA estimates the population at risk by multiplying the average individual risk by the number of people in a given environment, which is derived by a Monte Carlo simulation involving 2,000 iterations.

In assessing the benefits of the rule, EPA limits the analysis to reductions in human health effects attributed to a reduction in exposure to the toxic constituents in the wastes. Other benefits, such as improvements in environmental quality, are not quantified. As a result, the benefits of the land disposal restrictions for California list wastes may be underestimated. Furthermore, the assessment may underestimate benefits since the effects of the comparative risk analysis were not included. Therefore, negative benefits resulting from a technology considered riskier than land disposal (which would be designated not available for purposes of establishing treatment standards) were included in the analysis. Although this assessment does not estimate potential increases in risk from increased transportation and handling of California list wastes, an initial analysis indicates that such increases are not likely to be significant.

4. Benefits and Cost-Effectiveness

Based on this benefits analysis, the final rule is estimated to result in a net reduction in health risk equal to 2,298 weighted cases (e.g., cancer, fetal toxicity, decreases in reproductive capacity) over seventy years, which represents a 71.1 percent reduction from baseline practices. Of the total reduction, 2,048 cases—or 89 percent of the benefit—comes from changes to land disposal technologies, such as disposal in landfills, land farms, wastes piles, and disposal impoundments. An additional 10 percent reduction in risk comes from changes to land-based storage practiced in surface impoundments. Finally, approximately 1 percent of the total reduction comes from changes in treatment practiced in surface impoundments.

The analysis is in no sense time-dependent. Benefits are expressed as steady-state annual values. No attempt has been made to compare the initial year at which steady-state risk values are reached across options or between an option and the baseline. However, it can be generally observed that the effect of restricting land disposal is to reduce risk in absolute terms while shifting it forward temporally. This is because ground water risks, the type likely to predominate in the baseline, tend to occur a long time after waste is land disposed of, because of the slowness of constituent movement in this medium. However, air and surface water risks—while lower as a whole—are likely to predominate in the post-regulation scenario. Migration of wastes in these

media is relatively rapid, and thus risks are incurred sooner.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a Regulatory Flexibility Analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary if the agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA evaluated the economic effect of the rule on small entities, here defined as concerns employing fewer than 50 people. Because of data limitations, this small business analysis excludes generators of large quantities of California list wastes. The small business population here examined therefore includes only two groups: all noncommercial treatment, storage, and disposal facilities employing fewer than 50 persons, and all small quantity generators which are also small businesses.

One hundred and fifty-four (weighted) TSDFs are small businesses. Of these, six (weighted) exceed threshold values on the cost of production ratio, a figure that represents four percent of this small business population. Of the total of 2,046 small quantity generators examined in this analysis, the vast majority are also small businesses. A total of five SQGs (or less than one percent of all small businesses) exceeded threshold values on the cost of production ratios.

According to EPA's guidelines for conducting Regulatory Flexibility Analyses, if over 20 percent of the population of small businesses is likely to experience financial distress based on the costs of a rule, then the Agency is required to consider that the rule will have a significant effect on a substantial number of small entities and to perform a formal Regulatory Flexibility Analysis.[6] EPA has examined the rule's potential effects on small businesses as required by the Regulatory Flexibility Act and has concluded that today's final rule will not have a significant economic effect on a substantial number of small entities. As a result of this finding, EPA has not prepared a formal Regulatory Flexibility Analysis document in support of this rule. More detailed information on small business impacts is available in technical background documents prepared in support of this rulemaking.

C. Review of Supporting Documents

The primary source of information on current land disposal practices and industries affected by this rule is EPA's National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities. Waste stream characterization data and engineering costs of waste management are based on the 1981 RIA Mail Survey and on reports by the Mitre Corporation, "Composition of Hazardous Waste Streams Currently Incinerated," (April 1983), and "The RCRA Risk-Cost Analysis Model," (U.S. EPA, March 1984). The survey of small quantity generators has been the major source of data on this group. Data used to characterize generators of mixed PCB/RCRA hazardous wastes were taken from an EPA study, "Characterization of Mixed PCB/RCRA Hazardous Wastes," (February 1985). For financial and value of shipment information for the general screening analysis, 1982 Census data were used, adjusted by 1983 Annual Survey of Manufactures data. Producer price indices were also used to restate 1983 dollars in 1986 terms.

List of Subjects in 40 CFR Parts 260, 261, 262, 264, 265, 268, 270, and 271

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Imports, Indian lands, Insurance, Intergovernmental relations, Labeling, Packaging and container, Penalties, Recycling, Reporting and recordkeeping requirements, Security measures, Surety measures, Surety bonds, Waste treatment and disposal, Water pollution control, Water supply.

Dated: July 6, 1987.

Lee M. Thomas,

Administrator.

Therefore, for reasons set out in the preamble, Chapter I of Title 40 is amended as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

I. In Part 262:

1. The authority citation for Part 262 continues to read as follows:

Authority: Secs. 1006, 2002, 3002, 3003, 3004, 3005, and 3017, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937).

Subpart E—Special Conditions

2. Section 262.51 is revised to read as follows:

§ 262.51 Farmers

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this part or other standards in 40 CFR Parts 264, 265, 268, or 270 for those wastes provided he triple rinses each emptied pesticide container in accordance with § 261.7(b)(3) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

II. In Part 264:

1. The authority citation for Part 264 continues to read as follows:

Authority: Secs. 1006, 2002, 3004, and 3005 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6924, and 6925).

Subpart B—General Facility Standards

2. In § 264.13, paragraph (b)(7)(iii) is revised to read as follows:

§ 264.13 General waste analysis.

* * * * *

(b) * * *

(7) * * *

(iii) The annual removal of residues which are not delisted under § 260.22 of this chapter and do not exhibit a characteristic of hazardous waste, and which do not meet the treatment standards of Part 268 Subpart D of this chapter or. where no treatment standards have been established, the annual removal of residues which do not meet the applicable prohibition levels in Part 268 Subpart C or RCRA section 3004(d).

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

III. In Part 265:

1. The authority citation for Part 265 continues to read as follows·

Authority: Secs. 1006, 2002(a), 3004, 3005, and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and

[6] See U.S. EPA, "Guidelines for Compliance with the Regulatory Flexibility Act," February 1982.

Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935).

Subpart B—General Facility Standards

2. In § 265.13, paragraph (b)(7)(iii) is revised to read as follows:

§ 265.13 General waste analysis.

* * * * *

(b) * * *

(7) * * *

(iii) The annual removal of residues which are not delisted under § 260.22 of this chapter and do not exhibit a characteristic of hazardous waste, and which do not meet the treatment standards of Part 268 Subpart D of this chapter or, where no treatment standards have been established, the annual removal of residues which do not meet the applicable prohibition levels in Part 268 Subpart C or RCRA section 3004(d).

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

IV. In Part 268:

1. The authority citation for Part 268 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924).

2. The Table of Contents is amended by adding entries for § 268.32 and Appendix III to Part 268 to read as follows:

* * * * *

Subpart C—Prohibitions on Land Disposal

* * * * *

§ 268.32 Waste specific prohibitions—California list wastes.

* * * * *

Appendix III to Part 268—List of Halogenated Organic Compounds Regulated Under § 268.32

Subpart A—General

3. In § 268.1, the word "or" after the semi-colon in paragraph (c)(3) is removed, the period ending paragraph (c)(4) is replaced with "; or" and paragraph (c)(5) is added to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(c) * * *

(5) Where a farmer is disposing of waste pesticides in accordance with § 262.51.

4. In § 268.2, paragraph (a) is amended by adding definitions for "Halogenated organic compounds" and "Polychlorinated biphenyls" in alphabetical order and revising the definition for "Land disposal" to read as follows:

§ 268.2 Definitions applicable to this part.

(a) When used in this part the following terms have the meanings given below:

"Halogenated organic compounds" or "HOCs" means those compounds having a carbon-halogen bond which are listed under Appendix III to this Part.

* * * * *

"Land disposal" means placement in or on the land and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault or bunker intended for disposal purposes.

"Polychlorinated biphenyls" or "PCBs" are halogenated organic compounds defined in accordance with 40 CFR 761.3.

* * * * *

5. Section 268.3 is revised to read as follows:

§ 268.3 Dilution prohibited as a substitute for treatment.

No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with Subpart D of this part, to circumvent the effective date of a prohibition in Subpart C of this part, to otherwise avoid a prohibition in Subpart C of this part, or to circumvent a land disposal prohibition imposed by RCRA section 3004.

6. In § 268.4, paragraph (a)(2) is revised and paragraph (b) is added to read as follows:

§ 268.4 Treatment surface impoundment exemption.

(a) * * *

(2) The residues of the treatment are analyzed, as specified in § 268.7 or § 268.32, to determine if they meet the applicable treatment standards in Subpart D of this part, or, where no treatment standards have been established for the waste, the applicable prohibition levels specified in Subpart C of this part or RCRA section 3004(d). The sampling method, specified in the waste analysis plan under § 264.13 or § 265.13, must be designed such that representative samples of the sludge and the supernatant are tested separately rather than mixed to form homogeneous samples. The treatment residues (including any liquid waste) that do not meet the treatment standards promulgated under Subpart D of this part, or the applicable prohibition levels promulgated under Subpart C of this part or imposed by statute (where no treatment standards have been established), or which are not delisted under § 260.22 of this chapter and no longer exhibit a characteristic of hazardous waste, must be removed at least annually. These residues may not be placed in any other surface impoundment for subsequent management. If the volume of liquid flowing through the impoundment or series of impoundments annually is greater than the volume of the impoundment or impoundments, this flow-through constitutes removal of the supernatant for the purpose of this requirement. The procedures and schedule for the sampling of impoundment contents, the analysis of test data, and the annual removal of residue which does not meet the Subpart D treatment standards, or Subpart C or RCRA section 3004(d) prohibition levels where no treatment standards have been established, must be specified in the facility's waste analysis plan as required under § 264.13 or § 265.13 of this chapter.

* * * * *

(b) Evaporation of hazardous constituents as the principal means of treatment is not considered to be treatment for purposes of an exemption under this section.

7. In § 268.5, paragraphs (a)(2), (h)(1), and (h)(2)(iii) are revised and paragraph (h)(2)(v) is added to read as follows:

§ 268.5 Procedures for case-by-case extensions to an effective date.

(a) * * *

(2) He has entered into a binding contractual commitment to construct or otherwise provide alternative treatment, recovery (e.g., recycling), or disposal capacity that meets the treatment standards specified in Subpart D or, where treatment standards have not been specified, such treatment, recovery, or disposal capacity is protective of human health and the environment.

* * * * *

(h) * * *

(1) The storage restrictions under § 268.50(a) do not apply; and

(2) * * *

(iii) The surface impoundment, if in interim status, is in compliance with the requirements of Subpart F of Part 265,

§ 265.221 (a), (c), and (d) of this chapter, and RCRA section 3005(j)(1); or

* * * * *

(v) The landfill, if disposing of containerized liquid hazardous wastes containing PCBs at concentrations greater than or equal to 50 ppm but less than 500 ppm, is also in compliance with the requirements of 40 CFR 761.75 and Parts 264 and 265.

* * * * *

8. In § 268.6, paragraph (k) is added to read as follows:

§ 268.6 Petitions to allow land disposal of a waste prohibited under Subpart C of Part 268.

* * * * *

(k) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 500 ppm are not eligible for an exemption under this section.

9. Section 268.7 is amended by revising paragraphs (a) introductory text, (a)(1) introductory text, (a)(1)(ii), (a)(2) introductory text, (a)(2)(i)(B),)(2)(ii), (b) introductory text, (b)(1)(ii), (b)(2) introductory text, (b)(2)(i), and (c) to read as follows:

§ 268.7 Waste analysis and recordkeeping.

(a) Except as specified in § 268.32 of this part, the generator must test his waste or an extract developed using the test method described in Appendix I of this part, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this part.

(1) If a generator determines that he is managing a restricted waste under this part and the waste does not meet the applicable treatment standards, or where the waste does not comply with the applicable prohibitions set forth in § 268.32 of this part or RCRA section 3004(d), with each shipment of waste the generator must notify the treatment facility in writing of the appropriate treatment standards set forth in Subpart D of this part and any applicable prohibitions set forth in § 268.32 of this part or RCRA section 3004(d). The notice must include the following information:

* * * * *

(ii) The corresponding treatment standards and all applicable prohibitions set forth in § 268.32 or RCRA section 3004(d);

* * * * *

(2) If a generator determines that he is managing a restricted waste under this part, and determines that the waste can be land disposed without further treatment, with each shipment of waste he must submit, to the land disposal facility, a notice and a certification stating that the waste meets the applicable treatment standards set forth in Subpart D of this part and the applicable prohibitions set forth in § 268.32 of this part or RCRA section 3004(d).

(i) * * *

(B) The corresponding treatment standards and all appplicable prohibitions set forth in § 268.32 or RCRA section 3004(d);

* * * * *

(ii) The certification must be signed by an authorized representative and must state the following:

I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in 40 CFR Part 268 Subpart D and all applicable prohibitions set forth in 40 CFR 268.32 or RCRA section 3004(d). I believe that the information I submitted is true, accurate and complete. I am aware that there are significant penalties for submitting a false certification, including the possiblity of a fine and imprisonment.

* * * * *

(b) For wastes with treatment standards expressed as concentrations in the waste extract (§ 268.41), the owner or operator of the treatment facility must test the treatment residues or an extract of such residues developed using the test method described in Appendix I of this part to assure that the treatment residues or extract meet the applicable treatment standards. For wastes prohibited under § 268.32 of this part or RCRA section 3004(d) which are not subject to any treatment standards under Subpart D of this part, the owner or operator of the treatment facility must test the treatment residues according to the generator testing requirements specified in § 268.32 to assure that the treatment residues comply with the applicable prohibitions. For both circumstances described above, such testing must be performed according to the frequency specified in the facility's waste analysis plan as required by § 264.13 or § 265.13. Where the treatment residues do not comply with the applicable treatment standards or prohibitions, the treatment facility must comply with the notice requirements applicable to generators in paragraph (a)(1) of this section if the treatment residues will be further managed at a different treatment facility.

(1) * * *

(ii) The corresponding treatment standards and all applicable prohibitions set forth in § 268.32 or RCRA section 3004(d);

* * * * *

(2) The treatment facility must submit a certification with each shipment of waste or treatment residue of a restricted waste to the land disposal facility stating that the waste or treatment residue has been treated in compliance with the applicable performance standards specified in Subpart D of this part and the applicable prohibitions set forth in § 268.32 or RCRA section 3004(d).

(i) For wastes with treatment standards expressed as concentrations in the waste extract or in the waste (§ 268.41 or § 268.43), or for wastes prohibited under § 268.32 of this part or RCRA section 3004(d) which are not subject to any treatment standards under Subpart D of this part, the certification must be signed by an authorized representative and must state the following:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to comply with the performance levels specified in 40 CFR Part 268 Subpart D and all applicable prohibitions set forth in 40 CFR 268.32 or RCRA section 3004(d) without dilution of the prohibited waste. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

* * * * *

(c) The owner or operator of any land disposal facility disposing any waste subject to restrictions under this part must have records of the notice and certification specified in either paragraph (a) or (b) of this section. The owner or operator of the land disposal facility must test the waste or an extract of the waste or treatment residue developed using the test method described in Appendix I of this part, or using any methods required by generators under § 268.32 of this part, to assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in Subpart D of this part and all applicable prohibitions set forth in § 268.32 of this part or RCRA section 3004(d). Such testing must be performed according to the frequency specified in the facility's waste analysis plan as required by § 264.13 or § 265.13.

Subpart C—Prohibitions on Land Disposal

10. In Subpart C, paragraph (a)(4) is added to § 268.30 to read as follows:

§ 268.30 Waste specific prohibitions—Solvent wastes.

(a) * * *

(4) The solvent waste is a residue from treating a waste described in paragraphs (a)(1), (a)(2), or (a)(3) of this section; or the solvent waste is a residue from treating a waste not described in paragraphs (a)(1), (a)(2), or (a)(3) of this section provided such residue belongs to a different treatability group than the waste as initially generated and wastes belonging to such a treatability group are described in paragraph (a)(3) of this section.

* * * * *

11. In Subpart C, § 268.32 is added to read as follows:

§ 268.32 Waste specific prohibitions—California list wastes.

(a) Effective July 8, 1987, the following hazardous wastes are prohibited from land disposal (except in injection wells): (1) Liquid hazardous wastes having a pH less than or equal to two (2.0);

(2) Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 50 ppm;

(3) Liquid hazardous wastes that are primarily water and contain halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/l and less than 10,000 mg/l HOCs.

(b)-(c) [Reserved]

(d) The requirements of paragraph (a) of this section do not apply until November 8, 1988 where the wastes are contaminated soil or debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act or a corrective action required under RCRA Subtitle C.

(e) Effective July 8, 1989, the following hazardous wastes are prohibited from land disposal (subject to any regulations that may be promulgated with respect to disposal in injection wells):

(1) Liquid hazardous wastes that contain HOCs in total concentration greater than or equal to 1,000 mg/l and are not prohibited under paragraph (a)(3) of this section; and

(2) Nonliquid hazardous wastes containing HOCs in total concentration greater than or equal to 1,000 mg/kg.

(f) Between July 8, 1987 and July 8, 1989, the wastes described in paragraphs (e)(1) and (e)(2) of this section may be disposed of in a landfill or surface impoundment only if the facility is in compliance with the requirements specified in § 268.5(h)(2).

(g) The requirements of paragraphs (a) and (e) of this section do not apply if:

(1) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition (except for liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 500 ppm which are not eligible for such exemptions); or

(2) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to those wastes covered by the extension; or

(3) The wastes meet the applicable standards specified in Subpart D of this part or, where treatment standards are not specified, the wastes are in compliance with the applicable prohibitions set forth in this section or RCRA section 3004(d).

(h) The prohibitions and effective dates specified in paragraphs (a)(3) and (e) of this section do not apply where the waste is subject to a Part 268 Subpart C prohibition and effective date for a for a specified HOC (such as a hazardous waste chlorinated solvent, see e.g., § 268.30(a)).

(i) To determine whether or not a waste is a liquid under paragraphs (a) and (e) of this section and under RCRA section 3004(d), the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846.

(j) Except as otherwise provided in this paragraph, the waste analysis and recordkeeping requirements of § 268.7 are applicable to wastes prohibited under this Part or RCRA section 3004(d):

(1) The initial generator of a liquid hazardous waste must test his waste (not an extract or filtrate) in accordance with the procedures specified in § 261.22(a)(1), or use knowledge of the waste, to determine if the waste has a pH less than or equal to two (2.0). If the liquid waste has a pH less than or equal to two (2.0), it is restricted from land disposal and all requirements of Part 268 are applicable, except as otherwise specified in this section.

(2) The initial generator of either a liquid hazardous waste containing polychlorinated biphenyls (PCBs) or a liquid or nonliquid hazardous waste containing halogenated organic compounds (HOCs) must test his waste (not an extract or filtrate), or use knowledge of the waste, to determine whether the concentration levels in the waste equal or exceed the prohibition levels specified in this section. If the concentration of PCBs or HOCs in the waste is greater than or equal to the prohibition levels specified in this section, the waste is restricted from land disposal and all requirements of Part 268 are applicable, except as otherwise specified in this section.

Subpart D—Treatment Standards

12. Section 268.40 is revised to read as follows:

§ 268.40 Applicability of treatment standards.

(a) A restricted waste identified in this subpart may be land disposed without further treatment only if an extract of the waste or of the treatment residue of the waste developed using the test method in Appendix I of this part does not exceed the value shown in Table CCWE of § 268.41 for any hazardous constituent listed in the Table CCWE for that waste.

(b) A restricted waste for which a treatment technology is specified under § 268.42(a) may be land disposed after it is treated using that specified technology or an equivalent treatment method approved by the Administrator under the procedures set forth in § 268.42(b).

13. In § 268.42, paragraph (a) is amended by adding paragraphs (a)(1) and (a)(2) and paragraph (b) is revised to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

(a) * * *

(1) Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 50 ppm but less than 500 ppm must be incinerated in accordance with the technical requirements of 40 CFR 761.70 or burned in high efficiency boilers in accordance with the technical requirements of 40 CFR 761.60. Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 500 ppm must be incinerated in accordance with the technical requirements of 40 CFR 761.70. Thermal treatment under this section must also be in compliance with applicable regulations in Parts 264, 265, and 266.

(2) Nonliquid hazardous wastes containing halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/kg and liquid HOC-containing wastes that are prohibited under § 268.32(e)(1) of this part must be incinerated in accordance with the requirements of Part 264 Subpart O or Part 265 Subpart O. These treatment standards do not apply where the waste is subject to a Part 268 Subpart C treatment standard for a specific HOC

(such as a hazardous waste chlorinated solvent for which a treatment standard is established under § 268.41(a)).

(b) Any person may submit an application to the Administrator demonstrating that an alternative treatment method can achieve a measure of performance equivalent to that achievable by methods specified in paragraph (a) of this section. The applicant must submit information demonstrating that his treatment method is in compliance with federal, state, and local requirements and is protective of human health and the environment. On the basis of such information and any other available information, the Administrator may approve the use of the alternative treatment method if he finds that the alternative treatment method provides a measure of performance equivalent to that achieved by methods specified in paragraph (a) of this section. Any approval must be stated in writing and may contain such provisions and conditions as the Administrator deems appropriate. The person to whom such approval is issued must comply with all limitations contained in such a determination.

14. In § 268.50, paragraphs (a) introductory text, and (e) are revised and paragraph (f) is added to read as follows:

§ 268.50 Prohibitions on storage of restricted wastes.

(a) Except as provided in this section, the storage of hazardous wastes restricted from land disposal under Subpart C of this part of RCRA section 3004 is prohibited, unless the following conditions are met:

* * * * *

(e) The prohibition in paragraph (a) of this section does not apply to hazardous wastes that meet the treatment standards specified under §§ 268.41, 268.42, and 268.43 or the treatment standards specified under the variance in § 268.44, or, where treatment standards have not been specified, is in compliance with the applicable prohibitions specified in § 268.32 or RCRA section 3004.

(f) Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 50 ppm must be stored at a facility that meets the requirements of 40 CFR 761.65(b) and must be removed from storage and treated or disposed as required by this part within one year of the date when such wastes are first placed into storage. The provisions of paragraph (c) of this section do not apply to such PCB wastes prohibited under § 268.32 of this part

15. After Subpart E, Appendix III is added to Part 268 to read as follows:

Appendix III to Part 268—List of Halogenated Organic Compounds Regulated Under § 268.32

In determining the concentration of HOCs in a hazardous waste for purposes of the § 268.32 land disposal prohibition, EPA has defined the HOCs that must be included in the calculation as any compounds having a carbon-halogen bond which are listed in this Appendix (see § 268.2). Appendix III to Part 268 consists of the following compounds:

Volatiles

Bromodichloromethane
Bromomethane
Carbon Tetrachloride
Chlorobenzene
2-Chloro-1,3-butadiene
Chlorodibromomethane
Chloroethane
2-Chloroethyl vinyl ether
Chloroform
Chloromethane
3-Chloropropene
1,2-Dibromo-3-chloropropane
1,2-Dibromomethane
Dibromomethane
Trans-1,4-Dichloro-2-butene
Dichlorodifluoromethane
1,1-Dichloroethane
1,2-Dichloroethane
1,1-Dichloroethylene
Trans-1,2-Dichloroethene
1,2-Dichloropropane
Trans-1,3-Dichloropropene
cis-1,3-Dichloropropene
Iodomethane
Methylene chloride
1,1,1,2-Tetrachloroethane
1,1,2,2-Tetrachloroethane
Tetrachloroethene
Tribromomethane
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethene
Trichloromonofluoromethane
1,2,3-Trichloropropane
Vinyl chloride

Semivolatiles

Bis(2-chloroethoxy)ethane
Bis(2-chloroethyl)ether
Bis(2-chloroisopropyl) ether
p-Chloroaniline
Chlorobenzilate
p-Chloro-m-cresol
2-Chloronaphthalene
2-Chlorophenol
3-Chloropropionitrile
m-Dichlorobenzene
o-Dichlorobenzene
p-Dichlorobenzene
3,3'-Dichlorobenzidine
2,4-Dichlorophenol
2,6-Dichlorophenol
Hexachlorobenzene
Hexachlorobutadiene
Hexachlorocyclopentadiene
Hexachloroethane
Hexachloroprophene
Hexachloropropene
4,4'-Methylenebis(2-chloroaniline)
Pentachlorobenzene
Pentachloroethane
Pentachloronitrobenzene
Pentachlorophenol
Pronamide
1,2,4,5-Tetrachlorobenzene
2,3,4,6-Tetrachlorophenol
1,2,4-Trichlorobenzene
2,4,5-Trichlorophenol
2,4,6-Trichlorophenol
Tris(2,3-dibromopropyl)phosphate

Organochlorine Pesticides

Aldrin
alpha-BHC
beta-BHC
delta-BHC
gamma-BHC
Chlordane
DDD
DDE
DDT
Dieldrin
Endosulfan I
Endosulfan II
Endrin
Endrin aldehyde
Heptachlor
Heptachlor epoxide
Isodrin
Kepone
Methoxyclor
Toxaphene

Phenoxyacetic Acid Herbicides

2,4-Dichlorophenoxyacetic acid
Silvex
2,4,5-T

PCBs

Aroclor 1016
Aroclor 1221
Aroclor 1232
Aroclor 1242
Aroclor 1248
Aroclor 1254
Aroclor 1260
PCBs not otherwise specified

Dioxins and Furans

Hexachlorodibenzo-p-dioxins
Hexachlorodibenzofuran
Pentachlorodibenzo-p-dioxins
Pentachlorodibenzofuran
Tetrachlorodibenzo-p-dioxins
Tetrachlorodibenzofuran
2,3,7,8-Tetrachlorodibenzo-p-dioxin

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

V. In Part 270:

1. The authority citation of Part 270 continues to read as follows:

Authority: Secs. 1006, 2002, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6939 and 6974).

Subpart D—Changes to Permits

2. In § 270.42, paragraphs (o)(1) and (o)(2) are revised and paragraph (p) is added to read as follows:

§ 270.42 Minor modifications of permits.

* * * * *

(o) * * *

(1) The hazardous waste has been prohibited from one or more methods of land disposal under Part 268 Subpart C or RCRA section 3004;

(2) Treatment is in accordance with § 268.4 (if applicable), § 268.3, and:

(i) Treatment is in accordance with applicable standards established under § 268.41, § 268.42, or § 268.44; or

(ii) Where no treatment standards have been established, treatment renders the waste no longer subject to the applicable prohibitions set forth in § 268.32 or RCRA section 3004.

* * * * *

(p) Allow permitted facilities to change their operations to treat or store hazardous wastes subject to land disposal restrictions imposed by Part 268 or RCRA § 3004 provided such treatment or storage occurs in containers or tanks and the permittee:

(1) Requests a major permit modification pursuant to § 124.5 and § 270.41;

(2) Demonstrates in the major permit modification request that the treatment or storage is necessary to comply with the land disposal restrictions of Part 268 or RCRA section 3004; and

(3) Ensures that the treatment or storage units comply with the applicable Part 265 and part 268 standards pending final administrative disposition of the major modification request. The authorization to make changes conferred in this paragraph shall terminate upon final administrative disposition of the permittee's major modification request under § 270.41 or termination of the permit under § 270.43.

Subpart G—Interim Status

3. In § 270.72(e), paragraph (e) is revised to read as follows:

§ 270.72 Changes during interim status.

* * * * *

(e) In no event shall changes be made to an HWM facility during interim status which amount to reconstruction of the facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty percent of the capital cost of a comparable entirely new HWM facility. Changes prohibited under this paragraph do not include changes to treat or store in containers or tanks hazardous wastes subject to land disposal restrictions imposed by Part 268 or RCRA section 3004, provided that such changes are made solely for the purpose of complying with Part 268 or RCRA section 3004.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

VI. In Part 271:

1. The authority citation for Part 271 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

Subpart A—Requirements for Final Authorization

2. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date of promulgation	Title of regulation	Federal Register reference	Effective date
* * * * *			
July 8, 1987	Land disposal restrictions for California list wastes	52 FR 25760	July 8, 1987.
* * * * *			

3. Section 271.1(j) is amended by changing the sixth line from the bottom in table 2 by adding the publication date and the FR page number to read as follows:

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
* * * * *			
July 8, 1987	Land disposal restrictions for California list wastes	3004(d)	July 8, 1987, 52 FR 25760
* * * * *			

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Wednesday
July 8, 1987

Part VI

Department of the Interior

Bureau of Land Management

43 CFR Part 3430

Noncompetitive Leases; Detailed Procedures for Processing Preference Right Lease Applications for Coal; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3430

[Circular No. 2597; AA-650-07-4121-02-2410]

Noncompetitive Leases; Detailed Procedures for Processing Preference Right Lease Applications for Coal

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking provides detailed procedures for use in processing preference right lease applications for coal. The procedures contained in this final rulemaking allow full public participation throughout the administrative process and comply with the court order and opinion in *Natural Resources Defense Council (NRDC)* v. *Berklund,* 458 F. Supp. 925 (D.D.C. 1978), aff'd, 609 F.2d 553 (D.C. Cir. 1979).

EFFECTIVE DATE: August 7, 1987.

ADDRESS: Any suggestion or inquiries should be sent to: Director (650), Bureau of Land Management, Room 3610, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Carole Smith, (202) 343-4774.

SUPPLEMENTARY INFORMATION: A proposed rulemaking making amendments to regulations on noncompetitive leasing of coal that would provide detailed procedures for use in processing preference right lease applications was published in the Federal Register on February 20, 1987 (52 FR 5398), with a 30-day comment period. Eleven comments were received on the proposed rulemaking, four from environmental groups, one from a coal mining company, one from an industry trade association, one from an Indian legal group, one from a private individual, one from a State, and two from Federal agencies. These comments, which covered all aspects of the proposed rulemaking, were carefully reviewed and are discussed later in this preamble in the topic area to which they apply.

The Negotiation Process

One comment expressed the view that the Department of the Interior had given the environmental groups almost exclusive veto authority over the form of the final rulemaking. This view is incorrect. The Administrative Procedure Act requires that all comments received on a proposed rulemaking must be considered and responded to in the final rulemaking, a procedure that is being followed in this final rulemaking. All of the comments on the proposed rulemaking have been considered and have been responded to, including changes that have been made to the final rulemaking as a result of the comments. If the environmental groups do not agree with the final rulemaking, then the Settlement Agreement will not be fully implemented. The final rulemaking, once it becomes effective, will remain in effect even if the Settlement Agreement is not fully implemented.

A similar comment was of the opinion that the form of the final rulemaking had been determined before the proposed rulemaking was published and that any comments received on the proposed rulemaking would be ignored. This opinion is disputed by the fact that changes have been made in the final rulemaking as a direct result of the comments.

Another comment on the negotiation process that led to the preparation of the proposed rulemaking questioned why coal industry representatives were excluded from the final stages of the negotiations after having been consulted throughout a significant portion of the negotiations. As explained in the preamble to the proposed rulemaking, no substantive changes were made in the Settlement Agreement after the proposal was submitted to the Department of Justice in November 1985. The sole focus of the negotiations during 1986 was the appropriate procedure for implementing the Settlement Agreement, an area of discussion between the parties to the *NRDC* v. *Berklund* suit.

One comment requested that the preamble to the final rulemaking describe in detail the history of the negotiations process, emphasizing to a greater extent than had been done in the proposed rulemaking the compromises made by the environmental groups. This comment has not been adopted because the final resolution of the issues, rather than the negotiator's perceptions of the compromises made, is what is important. Further, the written record of the negotiations is available as part of the public record for the proposed rulemaking and anyone interested in the details of the history of the negotiations is free to visit Room 5555 of the Main Interior Building to review that history and any other matters in the public record.

Preparation of Environmental Impact Statements

Eight comments were received on this subject. Four of those comments dealt with the perceived inadequacies of the several environmental documents excepted from the procedures outlined in § 3430.3-2(c) of the proposed rulemaking for the preparation of environmental impact statements. These comments raised objections to the cited documents because they believe that the listing of these environmental impact statements in the proposed rulemaking, particularly the San Juan statement, gives them a legitimacy that they do not have. These comments were not adopted by the final rulemaking. The final rulemaking cites the exceptions to these procedures for preparing environmental impact statements and it is our view that the environmental impact statements listed in the proposed and final rulemakings fully comply with the provisions of the National Environmental Policy Act of 1969.

However, the Department of the Interior realizes that the most recent environmental impact statements cited in the rulemakings are three years old. Therefore, the Bureau of Land Management has been directed to review the environmental impact statements and to update the data in them, as needed. If that review shows that additional environmental analyses are required, then the Bureau will undertake such analyses.

In addition, three of the four comments discussed above raised questions concerning the alternatives that the rulemakings require to be analyzed in all environmental impact statements prepared for the remaining preference right lease applications. One of the three making comments on the alternatives expressed a concern that too many alternatives were being analyzed in the environmental impact statements and that only those alternatives which were "reasonable" and "economically practical" should be analyzed. The two other comments were of the view that the exchange and withdrawal/just compensation alternatives were not realistic because the data supporting these alternatives are generally not available at the time the environmental impact statement is being prepared.

The alternatives discussed in the proposed rulemaking and adopted by the final rulemaking were discussed and required by the court's opinion in *NRDC* v. *Berklund.* Therefore, to comply with the court opinion, each environmental impact statement must discuss each of these alternatives. Nevertheless, the environmental impact statements may only discuss the exchange and withdrawal/just compensation alternatives in general terms because the data for an extensive analysis may

not be available at the time the statements are prepared.

The fifth and sixth comments on the preparation of environmental impact statements requested that three additional preference right lease applications in Wyoming be exempted from the additional environmental documentation required by § 3430.3–2(c) of the proposed rulemaking. These three applications—W–82704, W–16876, and W–60638—involving a total of 680 acres, are located within or partially within existing mining permit areas with approved mining plans and ongoing mining operations, and, if not mined within the near future, this acreage will be bypassed. These comments have not been adopted. Although the areas discussed herein have been studied in previous environmental documents, including environmental impact statements, these documents do not meet the conditions agreed to by the parties to the *NRDC* v. *Berklund* suit. Unlike the environmental documents excepted from the procedures set out in the rulemakings for preparing environmental impact statements, the existing environmental analyses on the each of these three applications are not considered adequate for preference right lease application analyses purposes by the Bureau of Land Management. Nevertheless, because of the amount of data available, preparing one or more environmental impact statements which meet the conditions of the Settlement Agreement should not be difficult or time consuming. The newly prepared environmental documents would merely supplement the existing permitting documents by treating the alternatives to lease issuance outlined in the court opinion and this final rulemaking and by updating the data in the existing documents.

The final rulemaking removes from § 3430.3–2(c)(4) of the proposed rulemaking one preference right lease application—C–0120075—because it was relinquished by the applicant after the publication of the proposed rulemaking.

The seventh comment on the preparation of environmental impact statements expressed the view that the Department of the Interior had inaccurately characterized the Council on Environmental Quality's regulations convering the analysis of impacts where inadequate data or scientific uncertainty exists to do an adequate analysis. The comment pointed out that the regulation does not use the term "analysis." In response to this comment, § 3430.3–2(c)(4) has been changed by the final rulemaking to more accurately reflect the Council on Environmental Quality's regulations on the subject.

A final comment on the preparation of environmental impact statements was concerned about the compensation aspects of the exchange alternative. The comment noted that, when certificates of bidding rights were given in exchange for the relinquishment of a coal lease, there was no restriction on the area in which the bidding rights could be used. The comment wanted each certificate of bidding rights to carry a restriction which limits its use to the State in which the certificate was issued. This comment has not been adopted by the final rulemaking because the section of the existing regulations that would have to be changed to comply with the suggestion was not part of the proposed rulemaking and is thus beyond the scope of the final rulemaking.

A comment that is not directly related to the preparation of environmental impact statements stated that the language of § 3430.3–2(c)(2)(iii)(A) of the proposed rulemaking implied that the unsuitability review provides a determination that lands are suitable for mining. According to the comment, the review actually determines that lands are not unsuitable for mining at that stage of the process. The comment is correct. A final determination of the suitability of lands for mining is not made until the mine plan/permitting approval stage, not during the land use planning stage. The final rulemaking has adopted a change to § 3430.3–2(c)(2)(iii)(A) of the proposed rulemaking that reflects the comment's suggestion.

The Costing Process

Four comments dealt with the expanded final showing process described in § 3430.4 of the proposed rulemaking. Two of the comments expressed the view that the proposed costing process was not workable because the Bureau of Land Management and the preference right lease applicant could disagree by wide amounts on cost estimates with no objective basis for the Bureau to use in accepting or rejecting either set of estimates. The comments wanted the final rulemaking to drop the section on the public review of costs. The final rulemaking retains section 3430.4 of the proposed rulemaking on public review of costs. The court opinion stated that all environmental statements prepared for preference right lease applications should contain estimated costs of compliance with all mitigating measures recommended in the environmental impact statement. The environmental groups that participated in the negotiation that resulted in the Settlement Agreement insisted that the Department of the Interior was not complying with the requirements of the court opinion if environmental compliance costs were not analyzed and contained in each environmental impact statement prepared for designated preference right lease application. It is the position of the Department that estimating costs in environmental impact statements is premature and unrealistic, since the data analyzed in the environmental impact statements are based only on the preference right lease applicant's initial showing.

The initial showing contains preliminary data which are used to determine whether preference right lease applicants have discovered coal in the area covered by the application. The Bureau of Land Management does not make the commercial quantities determination until after the applicant has submitted the final showing data. The applicant submits the final showing data after the environmental impact statement has been completed. The environmental impact statement generates measures which are designed to mitigate, eliminate, or prevent impact to environmental resources found in the application area. These measures are included as special stipulations in the proposed lease sent to each preference right lease applicant after the required environmental impact statement has been completed for that particular preference right lease application area. The applicant then estimates the cost of mining the coal, which includes the costs of complying with all these terms and conditions, both standard and special, as well as with all other statutory and regulatory requirements. On the basis of these cost estimates, the applicant attempts to show that the probable value of the coal resource exceeds the probable cost of mining it, considering the cost of complying with the restrictions imposed in the lease.

Based on this sequence of processing steps, the Bureau of Land Management will prepare a cost document containing the estimated costs of mitigating, eliminating, or preventing impacts to the environmental resources within the preference right lease application area. Since the cost document is part of the environmental impact analysis, and since the Council on Environmental Quality's regulations require that the environmental analysis be a public process, the cost document must be subjected to public review and comment. Any public comments received, including those of the preference right lease applicant, would

have to be addressed in the record of decision on the preference right lease application.

It is the position of the Department of the Interior that the costing process provided for in the rulemaking is workable. Although the process has never been formalized in regulations before, the Bureau of Land Management has personnel experienced in making commercial quantities determinations and in estimating the cost of complying with standard and special (site-specific) lease terms and conditions by checking the applicant's data against other data collected by the Bureau. The only new aspect in this process is that some of the data will now be subjected to public review and comment, and that the comments received must be addressed and either adopted or rejected, with the reasons for the action taken being explained.

In verifying the applicant's data, Bureau of Land Management personnel have always had to judge whether the applicant's data are reasonable or not. Sometimes, these judgments involved data generated by the Bureau which varied widely from the data submitted by an applicant. Judgment is an integral part of the process of determining whether or not the applicant has proved the existence of coal in commercial quantities, that is, whether the applicant has made a final showing for the preference right lease application area. Therefore, the procedures provided in the rulemakings which require the Bureau to verify and, in some cases, to determine cost data independently are not new.

What is new is the requirement that some categories of these data are now subject to the review and interpretation of individuals and groups other than the Bureau of Land Management and the applicant. Because the public review of compliance costs has not been previously required, this final rulemaking has adopted the suggestion of two comments that the regulations provide all applicants with an additional opportunity to participate in the costing process. This change was made by amending the language of § 3430.4–3(b)(1) of the proposed rulemaking to give a preference right lease applicant an opportunity to review and comment on the Bureau's cost estimate document before that document is published for public review and comment.

This change resulted from the suggestion of two comments which requested that the Bureau's regulations provide industry with an opportunity to review and provide comments on the Bureau's cost estimate document before it is published for public review and comment. The comments expressed the view that applicants should be given the opportunity to rebut the estimates that they found unreasonable.

Although there is no assurance that the Bureau of Land Management would change its cost estimates based on the comments of an applicant, it is appropriate to allow a preference right lease applicant to review the Bureau's cost estimates, particularly if those estimates were generated independently of the data submitted by the applicant and if those estimates differ widely from those of the applicant. All comments submitted by an applicant on the cost estimate document and the Bureau's response to those comments will be available for public review.

Two comments requested that the final rulemaking contain language that would protect from release to the public any data that were designated as being confidential or proprietary by the applicant. This suggestion has been adopted by the final rulemaking and language has been added to § 3430.4–1 that provides this protection.

One comment requested that the comment period on the cost estimate document be extended to 90 days rather than 60 days provided in the proposed rulemaking. The comment stated that a cost estimate document will be complex and that the extra 30 days was needed to properly analyze it. The final rulemaking has not adopted this suggestion. However, the Department of the Interior would consider a request for an extension of the comment period on a complex cost estimate document from a member of the public. The final rulemaking has adopted a change to § 3430.4–3 of the proposed rulemaking that provides that the comment period on a cost estimate document shall not be less than 60 days.

One comment confused the comment period on the cost estimate document with the time period after the record of decision has been published before the Bureau can issue a preference right lease. The two periods are entirely different and follow one another. The record of decision, the document that states that either a preference right lease will issue or that the preference right lease application will be rejected, must discuss the public comments received during the comment period on the cost estimate document. No preference right lease subject to this final rulemaking can be issued prior to the expiration of the 30-day period after the publication of the record of decision.

Cost Categories

There were four comments on this subject. These comments focused on certain categories of costs that the proposed rulemaking would make available for public review and comment. Two of the comments maintained that some of the mitigation costs, such as archeological and paleontological mitigation costs, could not be determined until the completion of a detailed mining plan. These comments pointed out that the cost figures that are being considered by the Bureau of Land Management during this process are estimates, estimates which are not complete or final data. The Bureau recognizes that neither the preference right lease applicant nor anyone else will have complete data on any resource in the application area, even such a critical datum as the precise amount of coal reserves contained in the area, until the area is mined out, and the Bureau's decisions will be based on the fact that it is working with estimates.

Nevertheless, preference right lease applicants must provide cost estimates and the Bureau of Land Management must take steps to verify or independently determine that there has been a discovery of coal in commercial quantities on the application area. For this purpose, both an applicant and the Bureau must use the best available data, that is, estimates. Therefore, the final rulemaking has not adopted the suggested changes and retains all of the cost categories listed in § 3430.4–4 of the proposed rulemaking. There is, of course, no requirement in the rulemakings for estimating compliance costs for mitigating impacts to resources which do not exist in a preference right lease application area.

One comment expressed the view that the Department of the Interior does not have authority to require a preference right lease applicant to submit cost data on noise abatement and paleontological resources. Costs of mitigating impacts on noise levels and paleontological resources, where impacts to these may occur and which are covered by mitigation stipulations in the proposed lease, are legitimate costs of exploration, mining, and reclamation. These costs will affect the costs of coal resource recovery and must be considered in the final showing determination.

One comment wanted the special rights of native Americans recognized by the final rulemaking by expanding the cost category entitled "Socio-economics" to include compensation for the taking of property rights of native American occupants of the preference right lease application areas, whether or not the occupants hold title to the surface. The "Socio-economics" cost

category found in § 3430.4–4(b)(6) of the proposed rulemaking was not intended to increase or diminish any valid, existing property rights. The category is necessarily general because it has to include situations involving over 100 preference right lease applications. Adjudications of specific property rights must be made on a case-by-case basis, based on applicable laws, regulations, and court interpretations of property rights.

Another comment on § 3430.4–4 of the proposed rulemaking requested that the final rulemaking expand the cost categories to include culturally and religiously significant sites and herb-gathering areas. The final rulemaking has not adopted this request, but the factors cited in the comment will be addressed, if applicable, to a particular preference right lease application when it is reviewed.

In fact, all of the cost categories contained in § 3430.4–4 of the rulemakings are general. As the proposed rulemaking stated at § 3430.4–4: ". . . parenthetical examples are illustrative and not necessarily inclusive." The cost categories will, when applicable, be applied to a particular preference right lease application during analysis.

One comment found the cost categories contained in the proposed rulemaking confusing. The comment expressed the view that the categories did not distinguish between baseline data collected for the mining permit and the monitoring which may be required during mining and reclamation operations in order to comply with performance standards or permit conditions. The comment went on to suggest that the category labelled "permitting" should refer to baseline data only and the category labelled "environmental mitigation" should include data gathered during monitoring of mining and reclamation activities. Based on the suggestion in the comment, the final rulemaking has reformatted the cost categories to clarify what is meant by each of the specific cost categories.

Category (a) in the final rulemaking is intended to include only baseline data gathering, analysis, and reporting activities. Moreover, the Department of the Interior's review of the proposed rulemaking showed that the phrase "baseline and impact reports" referred to in the parenthetical portion of subcategories (a) (1) through (11) was inaccurate. Under existing procedures, baseline data are collected and analyzed and then made part of the permit application package, but such data are not used to generate separate reports. The cost of preparing the permit application package is already included in subcategory (a)(13) of the proposed rulemaking. Therefore, the final rulemaking changes the references to "baseline and impact reports" contained in subcategories (a) (1) through (11) of the proposed rulemaking to "collecting and analyzing baseline data", moves it from the parentheses to the subcategory description, and the other activities described in the subcategories have been rearranged accordingly.

The final rulemaking has retitled category (b) of the proposed rulemaking by inserting the word "Mining:" immediately after the figure (b). The final rulemaking also has adopted an amendment to category (b) so that it specifically includes as a subcategory monitoring costs required by permit, stipulation in the lease, law, or regulation, which include monitoring costs, both during mining and reclamation. This rearrangement of categories (a) and (b) by the final rulemaking is designed to clarify what is meant in each cost category and subcategory without changing the types of activities for which costing analyses will be conducted.

The final rulemaking makes minor changes in category (c), which remains titled "Reclamation," and includes the addition of a new cost subcategory entitled "site restoration," which covers the cost of removing mining facilities that are not part of the original land features. The final rulemaking contains all of the cost elements set forth in the proposed rulemaking.

Validity of Prospecting Permits

Three comments were offered concerning the Department of the Interior's policy on determining the validity of prospecting permits which are the basis of issuance of a preference right lease application. This policy was not addressed in the proposed rulemaking. It was, however, an issue that was discussed in the negotiations but was not resolved as part of the Settlement Agreement. The comments claimed that the Department has issued many prospecting permits in areas where the existence of coal was known and that those prospecting permits were issued in violation of law. One comment alleged that a particular prospecting permittee violated the terms of its prospecting permit by drilling on the permit area after the term of the permit had expired.

The final rulemaking has not adopted language that would change the Department of the Interior's policy on determining the validity of prospecting permits. Since July 1979, the Department's policy has been that it will not secondguess a determination made by a Departmental expert that the existence and workability of coal in a specific area was or was not known. The comments that allege that the existence of coal in a particular area was sufficient to disqualify that area from the issuance of prospecting permits equate existence with workability. The Department maintains the position that these two factors are separate and distinct. However, the Bureau of Land Management will, as part of its review of a preference right lease application, review the case file to verify, to the extent possible, whether the prospecting permit upon which the preference right lease application is based was issued in an area where the existence or workability of the coal was known, such as a known coal leasing area. The Department also has agreed to have the Bureau conduct a review to determine whether or not prospecting permittees complied with the terms and conditions of their permits and with the regulations in effect at the time that the permit was issued. The allegation that a particular prospecting permittee violated the terms and conditions of its permit by drilling after the term of the permit had expired will be reviewed and evaluated during this compliance check and appropriate action will be taken.

Streamlined Rejection Procedures

One comment was received on § 3430.5–1 of the proposed rulemaking. The comment requested that the procedures in the proposed rulemaking that are to be used in connection with preference right lease applications that clearly cannot demonstrate commerical quantities of coal be expanded by the final rulemaking to cover those preference right lease applications whose issuance was based on invalid prospecting permits. The final rulemaking has not adopted the suggestion made in the comment, although it retains the streamlined rejection process described in the proposed rulemaking. Determinations of the penalties to be imposed for violations of the terms and conditions of a prospecting permit, if violations are found during the compliance check, must be made on a case-by-case basis and may not always result in rejection of a preference right lease application. Further, if a preference right lease application has to be rejected because the compliance check shows violations of the terms and conditions of the prospecting permit, the streamlined rejection procedures provided by § 3430.5–1 of the rulemaking would not be applied. If a prospecting permit

should not have been issued, then the question of whether or not the permit area contains commerical quantities of coal is immaterial.

Editorial and grammatical changes as needed have been made.

The principal author of this final rulemaking is Carole Smith, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, and the staff of the Office of the Solicitor, Department of the Interior.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The processing procedures imposed by this final rulemaking will not affect small entities to any greater extent than it will affect any other entities engaged in the coal mining industry. The greater opportunities for public comment on the costing process for environmental stipulations will not interfere with any preference right lease applicant's ability or opportunity to consult with the Bureau of Land Management or to provide comments on the Bureau's estimated costs of compliance, when those cost estimates are released for public review and comment.

The final rulemaking contains no new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects 43 CFR Part 3430

Administrative practice and procedure, Coal, Environmental protection, Intergovernmental relations, Mines, Public lands-mineral resources.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act (30 U.S.C. 521–531), the Federal Coal Leasing Amendments Act of 1976, as supplemented (90 Stat. 1083–1092), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), Part 3430, Group 3400, Subchapter C, Chapter II of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior

June 11, 1987.

PART 3430—[AMENDED]

1. The authority citation for Part 3430 continues to read:

Authority: 30 U.S.C. 181 *et seq.;* 30 U.S.C. 521–531; 30 U.S.C. 351–359; 30 U.S.C. 1201 *et seq.;* 42 U.S.C. 7101 *et seq.;* and 43 U.S.C. 1701 *et seq.*

§ 3430.3–1 [Amended]

2. Section 3430.3–1(a) is amended by removing from where it appears at the end thereof the phrase "by December 1, 1984".

3. Section 3430.3–2 is amended by adding new paragraph (c) to read:

§ 3430.3–2 Environmental analysis.

* * * * *

(c) Except for the coal preference right lease applications analyzed in the *San Juan Regional Coal Environmental Impact Statement* (March 1984), the *Savery Coal EIS* (July 1983), and the *Final Decision Record and Environmental Assessment of Coal PRLAs (Beans Spring, Table, and Black Butte Creek Projects)* (September 1982), or covered by serial numbers C–0127832, C–0123475, C–0126669, C–8424, C–8425, W–234111, C–0127834, U–1362, NM–3099, F–014996, F–029746, and F–033619, the authorized officer shall prepare environmental impact statements for all preference right lease applications for coal for which he/she proposes to issue a lease, in accordance with the following procedures:

(1) The authorized officer shall prepare adequate environmental impact statements and other National Environmental Policy Act documentation, prior to the determination that commercial quantities of coal have been discovered on the lands subject to a preference right lease application, in order to assure, *inter alia,* that the full cost of environmental impact mitigation, including site-specific lease stipulations, is included in the commercial quantities determination for that preference right lease application.

(2) The authorized officer shall prepare and evaluate alternatives that will explore various means to eliminate or mitigate the adverse impacts of the proposed action. The impact analysis shall address each numbered subject area set forth in § 3430.4–4 of this title, except that the impact analysis need not specifically address the subject areas of Mine Planning or of Bonding. At a minimum, each environmental impact statement shall include:

(i) A "no action" alternative that examines the impacts of the projected development without the issuance of leases for the preference right lease applications;

(ii) An alternative setting forth the applicant's proposed action. This alternative shall examine the applicant's proposal, based on information submitted in the applicant's initial showing and standard lease stipulations;

(iii) An alternative setting forth the authorized officer's own proposed action. This alternative shall examine:

(A) The impacts of mining on those areas encompassed by the applicant's proposal that are found suitable for further consideration for mining after the unsuitability review provided for by Subpart 3461 of this title; and

(B) The impacts of mining subject to appropriate special stipulations designed to mitigate or eliminate impacts for which standard lease stipulations may be inadequate. With respect to mitigation of significant adverse impacts, alternative lease stipulations shall be developed and preferred lease stipulations shall be identified and justified. The authorized officer shall state a preference between standard lease stipulations and special stipulations (performance standards or design criteria).

(iv) An exchange alternative, examining any reasonable alternative for exchange that the Secretary would consider were the applicant to show commercial quantities, and, in cases where, if the lands were to be leased, there is a finding that the development of the coal resources is not in the public interest.

(v) An alternative exploring the options of withdrawal and just compensation and examining the possibility of Secretarial withdrawal of lands covered by a preference right lease application (assuming commercial quantities will be shown) while the Secretary seeks congressional authorization for purchase or condemnation of the applicant's property, lease or other rights.

(3) The authorized officer shall prepare a cumulative impact analysis in accordance with 40 CFR 1508.7 and 1508.25 that examines the impacts of the proposed action and the alternatives when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or nonfederal) or person undertakes such other actions.

(i) The cumulative impact analysis shall include an analysis of the combined impacts of the proposed preference right leasing with the mining of currently leased coal and other reasonably foreseeable future coal development, as well as other preference right leasing in the area under examination.

(ii) The cumulative impact analysis shall also examine the impacts of the proposed preference right leasing in conjunction with impacts from non-coal activities, such as mining for other minerals, other projects requiring substantial quantities of water, and other sources of air pollution.

(4) When information is inadequate to estimate impacts reasonably, the authorized officer shall comply with the provisions of 40 CFR 1502.22(b).

(5) Each environmental impact statement shall be prepared in accordance with the Council of Environmental Quality's National Environmental Policy Act regulations, 40 CFR Part 1500.

§ 3430.4-1 [Amended]

3. Section 3430.4-1 is amended by:

A. Renumbering paragraphs (c), (d) and (e) as paragraphs (d), (e) and (f), respectively;

B. Adding a new paragraph (c) to read:

(c) The authorized officer shall process all preference right lease applications, except for those preference right lease applications numbered F-029746 and F-033619, in accordance with the following standards and procedures:

(1) The authorized officer shall transmit a request for final showing to each applicant for each preference right lease application for which it proposes to issue a lease.

(2) Copies of each request shall be sent to all interested parties.

(3) The request shall contain proposed lease terms and special stipulations;

C. Amending the renumbered paragraph (d)(2), formerly paragraph (c)(2), by removing from where it appears at the beginning of the paragraph the word "The" and replacing it with the phrase "The proposed means of meeting the proposed lease terms and special conditions and the"; and

D. Adding a new paragraph (g) to read:

(g) All data submitted by the preference right lease applicant that is labeled as privileged or confidential shall be treated in accordance with the provisions of Part 2 of this title.

4. A new § 3430.4-3 is added to read:

§ 3430.4-3 Costing document and public review.

(a) The authorized officer shall prepare a document that estimates the cost of compliance with all laws, regulations, lease terms, and special stipulations intended to protect the environment and mitigate the adverse environmental impacts of mining.

(1) The costs shall be calculated for each of the various numbered subject areas contained in § 3430.4-4 of this title.

(2) The authorized officer's estimated costs of compliance may be stated in ranges based on the best available information. If a range is used, he/she shall identify the number from each range that the authorized officer proposes to use in making the determination whether a particular applicant has identified coal in commercial quantities.

(b) The authorized officer shall provide for public review of the costs of environmental protection associated with the proposed mining on the preference right lease application area.

(1) The authorized officer shall send the Bureau's cost estimate document to the preference right lease applicant and provide at least 30 days for the applicant to review said document before a notice of availability is published in the **Federal Register.** Comments submitted by the applicant, and the Bureau's response to the comments, shall be made available to the public for review and comment at the time the cost estimate document is made available.

(2) The authorized officer then shall publish in the **Federal Register** a notice of the availability of the Bureau's cost estimation document.

(3) The authorized officer also shall send the cost estimation document to all interested parties, including all agencies, organizations, and individuals that participated in the environmental impact statement or the scoping process.

(4) Copies of the cost estimation document shall be submitted to the Environmental Protection Agency.

(5) The public shall be given a period of not less than 60 days from the date of the publication of the notice in the **Federal Register** to comment on the Bureau's cost estimates.

(c) The cost estimate document and all substantive comments received (or summaries thereof if the response is voluminous) shall be part of the Record of Decision for the preference right lease application(s) (See 40 CFR 1505.2).

(1) The authorized officer shall respond to each substantive comment in the Record of Decision by modifying or supplementing his/her cost estimates, or explaining why they were not modified or supplemented in response to the comments.

(2) The authorized officer shall submit a copy of the Record of Decision with the public comments and the Bureau's response to the Environmental Protection Agency.

(3) The authorized officer shall publish a notice of the availability of each Record of Decision in the **Federal Register.**

(4) No preference right lease shall be issued sooner than 30 days following publication of the notice of availability required by paragraph (c)(3) of this section.

5. A new § 3430.4-4 is added to read:

§ 3430.4-4 Environmental costs.

Prior to determining that a preference right lease applicant has discovered coal in commercial quantities, the authorized officer shall include the following listed and any other relevent environmental costs in the adjudication of commercial quantities (examples may not apply in all cases, neither are they all inclusive):

(a) Permitting.

(1) Surface water—cost of collecting and analyzing baseline data on surface water quality and quantity (collecting and analyzing samples, constructing and maintaining monitoring facilities, purchasing equipment needed for surface water monitoring).

(2) Groundwater—costs of collecting and analyzing baseline data on groundwater quality and quantity (collecting and evaluating samples from domestic or test wells, purchasing well casings and screens and monitoring equipment, drilling and maintenance of test wells).

(3) Air quality—costs of collecting and analyzing baseline air quality data (purchasing rain, air direction, and wind guages and air samplers and evaporation pans).

(4) Vegetation—costs of collecting and analyzing data on indigenous vegetation (collecting and classifying samples for productivity analyses).

(5) Wildlife—costs of collecting and analyzing baseline data on wildlife species and habitats (collecting wildlife and specimens and data and purchasing traps and nets).

(6) Soils—costs of collecting and analyzing baseline soil data (collecting and analyzing soil samples by physical and chemical means).

(7) Noise—costs of collecting and analyzing baseline data on noise (purchasing necessary equipment).

(8) Socio-economics—costs of conducting social and economic studies

for baseline data (collecting and evaluating social and economic data).

(9) Archaeology, history, and other cultural resources—costs of collecting and analyzing data on archaeology, history, and other cultural resources (conducting archaeological excavations and historical and cultural surveys).

(10) Paleontology—costs of collecting and analyzing paleontological data (conducting surveys and excavations).

(11) Geology—costs of collecting and analyzing baseline geological data (drilling overburden cores and conducting physical and chemical analyses).

(12) Subsidence—costs of collecting and analyzing data on subsidence (setting monuments to measure subsidence).

(13) Mine planning—costs of developing mine permit application package (development of operating, blasting, air and water pollution control, fish and wildlife, and reclamation plans).

(b) Mining—environmental mitigation required by law or proposed to be imposed by the authorized officer.

(1) Surface water protection—costs of mitigating the impacts of mining on the quantity of surface water (purchasing relacement water and transporting it) and on the quality of surface water (construction sedimentation ponds, neutralization facilities, and diversion ditches).

(2) Groundwater protection—costs of mitigating the impacts of mining on the quantity of groundwater (replacing diminished supplies or water rendered unfit for its prior use(s)) and on the quality of groundwater (treating pumped mine water, compensating for damage to water rights, sealing sedimentation ponds).

(3) Air pollution control—costs of mitigating the impacts of mining on air quality (compliance with National Ambient Air Quality Standard and Protection from Significant Deterioration requirements using water and chemical sprays for dust control, installing and operating dust and other pollution collections).

(4) Noise abatement—costs of mitigating the impacts of mining on noise levels in mining area (installing and maintaining noise mufflers on equipment and around the mine site).

(5) Wildlife—costs of mitigating impacts to wildlife species identified as reasonably likely to occur and subject to proposed lease stipulations, and including costs of compliance with the Endangered Species Act and other laws, regulations, and treaties concerning wildlife protection.

(6) Socio-economics—costs of implementing any mitigation measure the Bureau or any other government agency has imposed; and of mitigating impacts on surface owners and occupants, including relocation costs and costs of compensation for improvements, crops, or grazing values.

(7) Archaeology, history, and other cultural—costs of monitoring and inspection during mining to identify archaeological, historical, and other cultural resources, and costs of mitigating impacts to these resources identified as reasonably likely to occur and subject to proposed lease stipulations.

(8) Paleontological—costs of monitoring and inspection during mining to identify paleontological resources and costs of mitigating impacts to these resources identified as reasonably likely to occur and subject to proposed lease stipulations.

(9) Subsidence—costs of mitigating the impacts of subsidence identified as reasonably likely to occur and subject to proposed lease stipulations.

(10) Monitoring—costs of purchasing and maintaining facilities, equipment, and personnel to accomplish monitoring required as a permit condition or lease stipulation, or by law or regulation.

(c) Reclamation.

(1) Topsoil removal and replacement—costs of reclaiming soil by stockpiling or continuous methods (removing and stockpiling and replacing topsoil, protecting the stockpile, if necessary, from erosion and compacting).

(2) Subsoil removal and replacement—costs of reclaiming subsoil by stockpiling or continuous method (removing and stockpiling and replacing subsoil, protecting the stockpile, if necessary, from erosion and compacting).

(3) Site restoration—costs of removing structures necessary to mining operations but not part of original land features (sedimentation ponds, roads, and buildings).

(4) Grading—costs of grading soil banks to their approximate original contour before replacing topsoil and subsoil, if applicable, and revegetating the affected area.

(5) Revegetation—costs of restoring vegetative cover to the affected area after grading and replacement of topsoil and subsoil, if applicable (liming, planting, irrigating, fertilizing, cultivating, and reworking, if first efforts are unsuccessful).

(6) Bonds—costs of bonds required by Federal, State and local governments.

§ 3430.5-1 [Amended]

5. Section 3430.5-1 is amended by:

A. Amending paragraph (a)(2) by removing from where it appears therein the citation "§ 3430.2-3" and replacing it with the citation "§ 3430.3-2"; and

B. Adding a new paragraph (c) to read:

(c) The authorized officer may reject any preference right lease application that clearly cannot satisfy the commercial quantities test without preparing additional National Environmental Policy Act documentation and/or a cost estimate document as described in §§ 3430.3-2, 3430.4-3 and 3430.4-4 of this title. The following procedures apply to rejecting these preference right lease applications:

(1) When an applicant clearly fails to meet the commercial quantities test as provided in this part, the authorized officer may notify the applicant:

(i) That its preference right lease application will be rejected;

(ii) Of the reasons for the proposed rejection;

(iii) That the applicant has 60 days in which to provide additional information as to why its preference right lease application should not be rejected; and

(iv) Of the type, quantity, and quality of additional information needed for reconsideration.

(2) If, after the expiration of the 60-day period, the authorized officer has no basis on which to change his/her decision, the authorized officer shall reject the preference right lease application.

(3) If the authorized officer reconsiders and changes the decision to reject the preference right lease application, he/she shall continue to adjudicate the preference right lease application in accordance with §§ 3430.3-2, 3430.4-3, and 3430.4-4 of this title.

[FR Doc. 87-15484 Filed 7-7-87; 8:45 am]

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Wednesday
July 8, 1987

Part VII

Department of the Interior

Bureau of Land Management

43 CFR Parts 2800 and 2880

Rights-of-way, Principles and Procedures; Rental Determination and Recovery of Costs; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2800

[Circular No. 2596; AA-330-07-4211-02-NCPF-2410]

Rights-of-Way, Principles and Procedures; Recovery of Costs

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the existing cost recovery procedures in 43 CFR Part 2800 by revising and relocating those procedures. This change provides for the recovery of reasonable costs of processing and monitoring right-of-way grants and temporary use permits issued under Title V of the Federal Land Policy and Management Act of 1976, using the criteria of section 304(b) of the Federal Land Policy and Management Act.

EFFECTIVE DATE: August 7, 1987.

ADDRESS: Inquiries of suggestions should be sent to: Director (330), Bureau of Land Management, Room 3660, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Darrell Barnes, (202) 343-5441.

SUPPLEMENTARY INFORMATION: The proposed rulemaking which would amend and relocate the procedures for cost recovery for rights-of-way and temporary use permits granted under the authority of title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761-1771), was published in the **Federal Register** on July 25, 1986 (51 FR 26836), with a 60-day comment period. A notice extending the comment period to October 20, 1986, was published in the **Federal Register** on September 19, 1986 (51 FR 33279), and was designed to provide the public with an opportunity to compare the impacts of the proposed rulemaking on cost recovery with the provisions of the proposed rulemaking providing procedures for the determination of fair market value for right-of-way grants and temporary use permits which was published in the **Federal Register** on September 5, 1986 (51 FR 31886). During the comment period, 29 comments were received—nine from electric and telephone utilities; seven from businesses engaged in the oil and gas industry; seven from Federal agencies; three from associations; two from miscellaneous businesses; and one from an individual.

Several of the comments suggested that the final rulemaking include a definition of the term "management overhead costs." The issue of management overhead was discussed in detail in the supplementary information section of the preamble to the proposed rulemaking, but the term was not defined in the proposed rulemaking. There are certain governmental functions which are excluded from actual costs incurred in connection with the processing of an application for a right-of-way grant or temporary use permit. The excluded functions are those costs that are essential for the proper functioning of the government and would be incurred even in the absence of any specific activities that are subject to cost recovery. Management overhead is a part of these excluded costs. Management overhead costs are the salaries and other costs associated with the Bureau directorate, including all State Directors, and the entire Headquarters staff of the Bureau, except in those cases where an individual member of that staff is required to perform work for a field office on a specific cost reimbursable case. Such costs are excluded from actual costs through the Bureau's accounting system. However, after reviewing the comments and the issues raised in them, the suggestions have been adopted and the final rulemaking adds a definition of the term "management overhead costs."

A number of the comments suggested that the final rulemaking provide that special study costs be limited to the costs of those studies or portions of studies performed within the right-of-way grant or temporary use permit area and be directly related to the cost of processing the application for a grant or permit. Additionally, these comments suggested that all of the costs of special studies or portions of studies performed outside of the proposed right-of-way grant or proposed temporary use permit shoul be borne by the United States. Section 304(b) of the Federal Land Policy and Management Act (43 U.S.C. 1734(b)) provides that reasonable costs may include the costs of special studies. In determining whether costs are reasonable, the Secretary of the Interior may take into account actual costs (exclusive of management overhead costs), the monetary value of the rights or privileges sought by the applicant, the efficiency to the government processing involved, that portion of the costs incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant, the public service provided and other factors relevant to determining the reasonableness of the costs. Whether a special study related to the processing of an application involves an area inside or outside the proposed right-of-way grant or the proposed temporary use permit is not one of the enumerated criteria. The criterion is whether all or a portion of such study costs are incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant, also taking into consideration the other reasonable cost factors set out in section 304(b) of the Act, Often, on large projects, studies are conducted on a number of alternative routes or sites. These costs often relate to areas outside the area of the right-of-way or temporary use permit but benefit the holder in analyzing and selecting the best route or site. It should also be pointed out that for many large projects there may be significant environmental impacts outside of the area of the right-of-way grant or temporary use permit as a result of the construction or operation of the facilities for which a right-of-way grant or temporary use permit is sought. An example is air and water quality impacts. As a result, applicants are required to take into account such potential impacts by various local, State and Federal facility siting and environmental protection laws. For these reasons, the suggested change has not been made and the final rulemaking adopts without change this provision of the proposed rulemaking.

One comment on the proposed rulemaking raised the point that private investor-owned electrical utilities should be exempt from paying recoverable costs because the lands and resources utilized will continue to serve the general public. The United States Court of Appeals for the Tenth Circuit in *Beaver, Bountiful, Enterprise* v. *Andrus* (637 F.2d 749 (1980)) was referenced as the basis for this contention. The view taken in the comments is incorrect in that the Court ruled that Beaver, Bountiful, Enterprise was a local governmental entity under State law and, therefore, exempt from the reimbursement of costs under the regulations of the Bureau of Land Management in effect at that time. The Court did not rule on the question of whether private investor-owned utilities should be exempt from recoverable costs. The final rulemaking has not made this suggested change and the provisions of the proposed rulemaking have been adopted.

Other comments related to this issue suggested that private investor-owned gas and electric utilities, as well as companies involved in oil and gas extraction, provide public services and benefits, per se, and, therefore, should be exempt from cost recovery charges. The Federal Land Policy and

Management Act provides authority to waive or reduce recoverable costs in situations involving Federal, State or local governments or any agency or instrumentality thereof, and in cases involving reciprocal or cost share roads or when otherwise equitable and in the public interest. Numerous administrative appeal decisions have affirmed the position of the Department of the Interior that a reduction or waiver of reimbursable costs is not appropriate where an applicant's principal source of revenue is customer charges. The legislative history of section 504(g) of the Federal Land Policy and Management Act (43 U.S.C. 1764(g)) reveals that Congress intended that waivers in recoverable costs be restricted to agencies of the United States and to those situations where the recoverable costs is a token amount and the cost of collecting it unduly large. In light of this discussion, the suggested change has not been made and the final rulemaking adopts without change the provisions of the proposed rulemaking. A similar comment questioned whether electric or telephone facilities financed under the Rural Electrification Act were automatically exempt from the recovery of reasonable administrative and other costs incurred by the United States in processing an application for a right-of-way grant or temporary use permit, as well as the costs of monitoring a grant or permit. Again, the legislative history of section 504(g) of the Federal Land Policy and Management Act does not support such an automatic exemption for reimbursable costs; therefore, this suggested change has not been adopted by the final rulemaking, leaving the provisions of the proposed rulemaking on this point unchanged.

A few comments stated that the definition of the term "monetary value of the rights and privileges sought" contained in the proposed rulemaking was unclear and should be rewritten. The term as defined in the proposed rulemaking means the "objective value of the right-of-way or permit." Monetary value is what the right-of-way grant or temporary use permit is worth to the applicant in financial terms, as a part of the entire project being undertaken by the applicant. The definition of the term "monetary value of the rights and privileges sought" as it appeared in the proposed rulemaking has been clarified by the final rulemaking.

Additionally, one related comment on the proposed rulemaking suggested that the term "monetary value of the rights and privileges sought" be defined as the fair market value of the right-of-way grant or temporary use permit itself. A fair market value definition was considered as part of the proposed rulemaking but was not adopted because the Congress did not intend the use of the fair market value concept in this situation. First, Congress specifically uses the term "fair market value" when that is what is meant as, for instance in section 504(g) of the Federal Land Policy and Management Act concerning fair market value for rental of right-of-way grants under title V. Second, Congress did not use fair market value in section 304(b) of the Act. This final rulemaking has not adopted this suggested change and the term as defined in the proposed rulemaking is unchanged.

One comment expressed concern that no allowance would ever be given under the definition of the term "public benefit" as contained in the proposed rulemaking for any of the archaelogical, biological, socio-economic, etc., data collection required during the processing of an application unless such data specifically benefited the Bureau of Land Management. This is simply not the case. As the definition is used in the proposed rulemaking, two levels of activities are recognized in relation to the issue of public benefit. First, the term "public benefit" includes the cost of studies for information which the Bureau is required by statute or regulation to collect, regardless of whether there is an application pending (e.g., land use planning, wilderness studies) and thus cannot be charged to an applicant. As a matter of Bureau practice, the cost of such information is not included in the tabulation of actual costs for a right-of-way grant or temporary use permit. Second, that term includes the cost of studies and data collection which are undertaken solely for processing an application, but which may have some value or use to the United States or *the general public*, separate and apart from processing of an application. The latter may include the type of data mentioned in the comment, but warrants evaluation on a case-by-case basis as provided for in the proposed rulemaking. After careful consideration of the comments and the proposed rulemaking, the final rulemaking has adopted changes that clarify the issue.

A few of the comments recommended that the definition of the term "efficiency to the government processing" contained in the proposed rulemaking should be changed to provide a penalty (cost reimbursement adjustment) if the United States fails to be efficient in its processing procedure. This concept would be subject to highly arbitrary judgment that would create conflict and would be impossible to measure and apply. Additionally, the Bureau of Land Management's experience shows that many delays in the processing of an application are caused by the applicant submitting an incomplete application, because of uncertainty by the applicant on the priority that should be applied to the various projects it has under consideration, or concern about going ahead with a large capital investment during a period of adverse market conditions. If the concept suggested in the comment were applied, it might also be reasonable to penalize the applicant where delays are caused by applicant inefficiencies. The adoption of this concept would create conflict and delay in the processing of an application. Since it would be impossible to apply this concept in a timely, reasonable and cost efficient manner, the final rulemaking has not adopted the recommended change.

A couple of comments suggested that the proposed rulemaking be amended by the final rulemaking to add a definition of the term "cost of construction" to mean the actual, lowest cost of construction, excluding an applicant's management overhead, and any additional costs resulting from Bureau of Land Management mitigation requirements. No information was provided in the comments as to what should be included in an applicant's overhead costs. The proposed rulemaking would, in some cases, require an applicant for a project determined to be in Category V to submit a construction cost estimate for the entire project, with an identification of that portion of those costs attributable to construction of the proposed facilities on public lands. Such an estimate would consist of the construction cost requirements necessary for the applicant to achieve the goals of the project. Whether this can be achieved by constructing the lowest cost alternative for a particular project depends entirely on such things as anticipated project life, engineering requirements, the need for future related facilities, etc., for which an applicant has detailed knowledge and responsibility. In any event, the applicant is responsible for providing a realistic project cost plan which meets his/her needs. The construction cost estimate should include expenditures for labor (gross wages and fringe benefits), supervision, engineering, materials, equipment, stores and contracts. The cost estimate should also include an indirect cost element covering such

things as collection of data, etc., used partly, but not exclusively, on a particular project. This method of calculating costs is in accordance with generally accepted practice in both the private and public sectors. Both the proposed and final rulemakings provided that a realistic cost estimate be submitted for Bureau review and coordination with the application. The applicant is responsible for determining the level of construction needed to achieve project goals. Additionally, section 505 of the Federal Land Policy and Management Act (43 U.S.C. 1765) requires the Bureau: to include in each right-of-way grant or temporary use permit terms and conditions necessary to protect the environment; compliance with applicable Federal or State law and; otherwise to protect the public interest in the lands adjacent to or traversed by the right-of-way grant or temporary use permit. Current Bureau Manual guidance to field offices provides instruction that mitigation requirements shall be aimed at protecting the existing condition of the public lands and resources and not at enhancing the public lands and resources, thus preventing abuse in this area. After careful consideration, the final rulemaking has adopted the provisions of the proposed rulemaking on this issue without change.

Several comments suggested that the definition of what constitutes a Category I application contained in the proposed rulemaking be modified by the final rulemaking to include all projects which are categorically exempt from analysis under the National Environmental Policy Act (42 U.S.C. 4321 et seq.) or categorically excluded under Department of the Interior or Bureau of Land Management policies. This point made in the comment is well taken. Such projects, along with other minor actions, do fall under the definition of a Category I application. It is also current Bureau policy to make maximum use of categorical exceptions. However, specific guidance on this point, as well as other types of applications which commonly qualify for various categories, has been incorporated into the Bureau's Manual, where it is more appropriate, rather than making it a part of the final rulemaking.

A number of the comments questioned the adequacy of all of the category definitions contained in the proposed rulemaking, expressing the view that the various categories did not realistically represent the involvement of the Bureau of Land Management. As discussed in the preamble to this proposed rulemaking, the definitions contained in the proposed rulemaking are based on actual work/cost information provided by various Bureau field offices detailing the cost for each type of work performed on applications for right-of-way grants or temporary use permits of varying levels of difficulty. Review and analysis of this data reaffirmed the category definitions used in the proposed rulemaking, which the final rulemaking adopts without change.

Several of the comments questioned the costs shown in the fee schedules provided in the proposed rulemaking for both processing and monitoring. Some of the comments suggested that they were too high, while other comments thought that they were not sufficient to cover the costs incurred by the United States in processing the application. As discussed in the preamble to this proposed rulemaking, the costs shown in the fee schedules are based on the current average costs incurred by the Bureau of Land Management in processing applications for right-of-way grants and temporary use permits, as well as for monitoring those grants and permits. Since these costs are average costs, there are instances where the cost of handling a specific application in a given category may be higher or lower than those shown on the schedule. It should also be noted that cost reimbursement fees for Categories I through IV do not include the cost of appraisals to determine the fair market value rental. The use of current average costs to set a fee schedule is a commonly accepted practice in both the private and public sectors. The Secretary of the Interior has further determined that this method results in lessened administrative expense when compared to the accounting and reporting of actual costs for each application for a right-of-way grant or temporary use permit. As a result of these actions, the fee schedule in the proposed rulemaking has been adopted without change by the final rulemaking.

Several comments were of the view that the per mile fee schedule in the existing regulations should be maintained or adjusted to reflect a more realistic fee in the final rulemaking. Information provided by Bureau of Land Management field offices on the nature of the work involved in processing the various applications for right-of-way grants or temporary use permits showed that there was little relationship to the length or size of the grant or permit covered by the application. Costs were shown to relate to: (1) The amount of information needed to meet the requirements of the National Environmental Policy Act; (2) whether this information was available in Bureau files or must be collected on the ground; (3) the number of necessary field examinations of the proposed alternative areas to be utilized by the right-of-way grant or temporary use permit; and (4) the type of appraisal required to estimate the annual rental to be charged for the right-of-way. For these enumerated reasons, the final rulemaking has not adopted this suggestion.

A few comments took exception to the statement in the supplementary information section of the preamble to the proposed rulemaking that Categories I through IV applications generally involve proposed projects that are of local benefit and are not of regional or national significance and, therefore, there is little opportunity for public benefits or public services associated with these applications and that some automatic public service/public benefit reduction should be incorporated into the fee schedule for these categories. Information obtained from Bureau of Land Management field offices shows that the majority of non-major applications received (Categories I through IV) fall into Categories I and II. Categories I and II involve proposals where little or no additional information is required and either one or no field examination of the public lands is needed. These projects are usually small and local in impact. As discussed earlier in this preamble, Categories I through IV cost reimbursement fees do not include the cost of appraisals to determine fair market rental for the reasons set out in the earlier discussion. Both the proposed and final rulemakings also provide the flexibility for an applicant to apply for a reduction or waiver of fees in unique situations where it is believed that the specific project in these categories provides independent value or utility benefiting the United States or the general public. The final rulemaking has not made the suggested changes and adopts this portion of the proposed rulemaking.

The comments on use of the category/fee system provided by the proposed rulemaking were on both sides of its use. Those in favor of using the system pointed out that such a system requires an initial review of each proposal with an applicant, coordination and an early decision, which should improve efficiency. Another comment felt that the use of the system would be administratively burdensome. A similar system to that contained in the proposed rulemaking has been in effect for right-of-way grant and temporary use permit applications under the authority of the

Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181), since February 1985. The existing system has proven efficient and no major problems have been encountered during its use. The Bureau of Land Management urges right-of-way grant and temporary use permit applicants to take advantage of the preapplication coordination activity provided by the existing regulations, as the Bureau's experience shows that this process saves both the Bureau and the applicant time and money and avoids problems. The preapplication meeting step provides a good opportunity to discuss issues such as the appropriate category, the proper fees and other concerns. Direct communications, either in person or over the telephone, are invaluable in reducing delays that can result from misunderstandings, and should foster maximum efficiency of the system provided by the proposed and final rulemakings.

One of the comments raised the point that the collection of reimbursable costs, along with an annual rental, is a double charge for the use of the public lands covered by an application for a right-of-way grant or temporary use permit.

The Federal Land Policy and Management Act requires the collection of reasonable costs incurred by the United States in its processing and monitoring of a right-of-way grant or temporary use permit that benefits the user; the Act also requires collection of an annual rental. The proposed and final rulemakings follow the requirements of the Federal Land Policy and Management Act regarding the recovery of costs.

Several of the comments requested that the proposed rulemaking be modified to delete the provision which allows the authorized officer to make a change of category to Category V if a subsequent determination is made that an environmental impact statement is required. The reasoning in the comments was that such changes cause uncertainty and problems in estimating project costs. The experience of the Bureau of Land Management in processing an application and monitoring a grant or permit indicates that there is only a very small probability for a change in category once an initial category determination has been made. Most applications requiring the preparation of an environmental impact statement are readily identified in the preapplication stages of the proposal due to the location of the project, its complexity, the degree of public interest, or project related environmental concerns. There also are occasions when an applicant increases the scope of a project that was initially determined to be in Categories I through IV in order to meet newly identified project needs and this action triggers the requirement for an environmental impact statement. There are other situations where the environmental assessment identifies issues not previously known to either the applicant or the Bureau but of sufficient magnitude to require preparation of an environmental impact statement. Because of the high cost of preparing an environmental impact statement, the flexibility to make such a category change is warranted. The final rulemaking has adopted this provision of the proposed rulemaking without change.

Several comments questioned whether any other category changes, i.e., a change other than Category V when an environmental impact statement is determined to be required, should be allowed, and requested that the final rulemaking clarify this issue. The very small probability for such changes in category determination does not justify the additional time and expense that would be incurred by all concerned in the effort to obtain other changes in categories within Categories I through IV. Therefore, neither the proposed nor the final rulemakings provide a procedure for other changes in category determination. The final rulemaking does modify the proposed rulemaking by adding a statement that no other changes in category are permitted.

Several comments expressed concern that where a category or fee determination is appealed, substantial application processing delays could result while the appeal is being considered, and the comments wanted the final rulemaking to specify a timeframe for completion of the category/fee determination. There are several aspects to the suggestions in these comments. First, the proposed rulemaking provides that where an appeal is filed by an applicant for a proposal determined to be in Categories I through IV, the application may be processed and a right-of-way grant or temporary use permit issued as long as payment of the required fee has been made. Once an administrative decision has been rendered on the appeal, the authorized officer would then make any refund or other changes directed by the decision. As more than 90 percent of the applications received fall into Categories I through IV, the majority of the applications need not be delayed by an appeal. Second, for applications determined to be in Category V (10 to 20 per year over the past 4 years), the proposed rulemaking provides for close coordination between the Bureau of Land Management and the applicant to identify project scope, potential conflicts, alternatives, cost factors, including any reductions warranted under section 304(b) of the Federal Land Policy and Management Act, and also to work out problems, thus preventing appeals. Because these are often major projects involving millions of dollars, it is important that an applicant and the United States coordinate closely in the preapplication and application stages and reach an agreement on the level of activities for which each party has responsibility, and the costs associated therewith. This proposed rulemaking provides the coordination framework needed to prevent conflicts and avoid delays. In addition, specific guidance has been placed in the Bureau's Manual to aid field offices in the efficient processing of applications for right-of-way grants and temporary use permits. Because Category V applications have the potential for major cost impacts on a current Bureau budget, the proposed rulemaking provides that no work will be done on such applications until an agreement has been reached on reasonable costs and appropriations are available to pay for the Bureau's share of any such costs. Further, the Bureau has made a policy decision that where an appeal is filed on a decision that an application falls within Category V, further action on processing that application will be delayed pending the outcome of the appeal. These comments did not result in any changes in the final rulemaking.

Several comments expressed considerable confusion about whether the proposed rulemaking provided for application of the reasonableness factors in section 304(b) of the Federal Policy and Management Act to Category V applications. The comments expressed the view that the proposed rulemaking establishes an arbitrary method for determining fees. Under that method, the Bureau of Land Management would charge actual costs of processing an application for a right-of-way grant or temporary use permit and monitoring said grant/permit where one percent or less of the estimated construction costs are applicable to the public lands segment of the proposed project. These comments interpreted the proposed rulemaking as automatically substituting the "one percent option" for the analysis required by section 304(b) of the Federal Land Policy and Management Act. Likewise, a couple of comments were of the view that an

analysis of reasonable costs should stand by itself, i.e., not be subject to considerations such as the one percent option.

The intent of the proposed rulemaking was to provide an applicant a range of alternatives from which to select the best one for its particular circumstances. First, an applicant could choose an analysis as required by section 304(b) of the Act. The authorized officer would apply the "reasonableness factors" set forth in section 304(b) of the Act to the applicant's project to determine what costs the applicant is required to pay. Second, because of timing or overall costs considerations, the applicant could forego the analysis required by section 304(b) of the Act and agree to pay all actual costs and go ahead with a project. These choices are provided by the proposed rulemaking. Third, as an alternative to the development of extensive detailed data an costly analysis, the one percent option is provided. Under this option, an applicant would agree to pay those actual costs of processing that do not exceed one percent of the applicant's anticipated costs of construction on public lands. At this level, the costs are not onerous: most construction estimates have a margin of error of plus or minus ten percent. Additionally, the cost of performing a complete section 304(b) analysis may exceed this one percent level or even exceed the processing costs for a given application. These alternatives can be easily applied and are administratively simple. Therefore, an applicant for a right-of-way grant that is likely to fall within Category V, must consider the reasonableness criteria contained in the proposed rulemaking and make a decision on the best course of action to pursue, i.e., a determination of reasonable costs under section 304(b) of the Act, paying all actual costs, or selecting the one percent ceiling.

The proposed and final rulemaking provided the coordination framework needed for full discussion in the pre-application stage or early in the application process of potential reductions or waivers of fees, information on the scope of the project, estimated construction costs, alternatives to the proposed project, etc., and coordinate efforts with the authorized officer to process the pending applications efficiently. This approach provides for the full, case-by-case consideration of any potential reduction or waiver of fees as a result of the application of the criteria in section 304(b) of the Federal Land Policy and Management Act and also provides the flexibility for other choices to be selected by an applicant. After careful review of these provisions in the proposed rulemaking, the final rulemakaing has adopted clarifying language.

A few of the comments recommended deletion of the provisions of the proposed rulemaking that would prevent processing of a Category V application when the United States is responsible for paying some portion of the actual costs, but there is no funding available to the Bureau of Land Management under existing appropriations to pay those costs. The Federal Budget process cannot be adjusted quickly to meet unexpected and major changes in workload. Moreover, the process does not normally permit justification of an appropriation based on conjecture about future needs. The Congress does allow the expenditure of funds from general appropriations for emergency situations where the expenditures is needed to protect the property of the United States, for example, fire suppression costs. In all other instances, Congress places very narrow limits on the amount of funds that cannot be transferred from one account to another during a fiscal year. Further, with the tight Federal budgets of recent years, it is a distinct possibility that there may not be adequate funds in the Bureau of Land Management's appropriations to handle a request for expedited, non-standard processing of an application or where, under an analysis required by section 304(b) of the Federal Land Policy and Management Act or the one percent option, the United States share of costs is large. Most applications fall in Categories I through IV and it is expected that the Bureau's budget will allow handling of those projects. For Category V projects, close coordination between the Bureau and an applicant is important. This coordination will allow changes to the greatest extent possible or a prompt explanation of why the applicant's request cannot be met. Experience shows that the use of the preapplication step saves time and expense for everyone involved in processing an application and avoids conflicts and problems that can result in delays. The final rulemaking has adopted the provisions of the proposed rulemaking on this point.

Several comments questioned the provision in the proposed rulemaking which allows an applicant to choose to waive consideration of reasonable costs for an application determined to be in Category V and to pay all actual costs. As part of the process that determines if an application falls under Category V, the applicant and authorized officer are required to discuss preliminary project plans, estimated actual costs of Bureau of Land Management work, estimated construction costs, etc., and reach an understanding on the nature of the activities for which each party is to be responsible. As a result of these considerations, an applicant may decide that paying all actual costs and proceeding with a project is the most beneficial course to follow. These provisions for flexibility to consider fully all of these factors are contained in the proposed rulemaking and have been adopted by the final rulemaking.

Several comments raised a question about whether the one-percent option applies in situations where an applicant agrees to pay all actual costs. The one-percent option does not apply in this situation. Again, the applicant must, after consideration of the analysis of the reasonableness factors associated with an application, decide what is the best course to follow under the specific circumstances, i.e., agree to pay all actual costs, select the one-percent option, or seek a reduction or waiver from paying all or a part of actual costs. The flexibility needed to make the decisions outlined above is provided in the proposed and final rulemakings.

A couple of comments suggested that in those instances where an applicant chooses to do all or a part of any study or analysis required in connection with the processing of an application, any processing costs incurred by the applicant should be considered as a portion of the Bureau of Land Management's actual costs when establishing the one-percent cap. The Bureau regards such costs as voluntary expenditures by an applicant for its convenience (generally to speed the processing of an application). Moreover, these costs are outside the ambit of section 304(b) of the Federal Land Policy and Management Act's reimbursement provision which relates to the Bureau's actual cost (exclusive of management overhead). This suggestion did not result in any change to the final rulemaking.

One comment suggested that § 2802.3-1(g)(2) of the proposed rulemaking be clarified by adding a cross-reference to § 2802.5. This change has been adopted by the final rulemaking.

Several comments were received both for and against the provision of the proposed rulemaking that allows the authorized officer to re-estimate the Bureau of Land Management's actual costs for a Category V application when it is determined that a change warranting a re-estimate has occurred. A couple of the comments were of the

view that this provision caused unacceptable uncertainty. Several other comments pointed out that this provision is necessary in those instances where an applicant finds it necessary to modify the scope of the project after an initial cost reimbursement agreement has been reached. Also, a re-estimate is subject to the same administrative review as an initial estimate, thus assuring an applicant that unwarranted changes will not occur. For these reasons, the final rulemaking has not adopted any changes in these provisions of the proposed rulemaking.

One comment raised the point that it is unclear whether the section of the proposed rulemaking covering periodic advance payments is applicable only to Category V applications or to all applications. In recognition of this point, the final rulemaking contains language making it clear that periodic advance payments apply only to Category V applications.

One comment questioned whether the monitoring fee provided for in the proposed rulemaking was a one-time fee or an annual charge. The monitoring payment is a one-time fee for each right-of-way grant or temporary use permit determined to fall under Categories I through IV. For grants or permits determined to fall under Category V, monitoring costs are determined at the same time the costs for processing the application for the grant or permit are set. After careful review of this point, the final rulemaking has adopted a clarification of this section of the proposed rulemaking.

Two comments expressed concern that the monitoring fee section of the proposed rulemaking contained contradictory language on when the fee is to be collected. The wording of the proposed rulemaking is unclear and the final rulemaking has adopted clarifying changes.

Several comments suggested that the wording of § 2808.5(a) of the proposed rulemaking dealing with other cost considerations be changed from "may reduce or waive cost reimbursement" to "shall reduce or waive cost reimbursement." The proposed rulemaking follows the language of section 304(b) of the Federal Land Policy and Management Act on this issue. Such reductions or waivers are not mandatory, but will be based on the merits of each project. The final rulemaking has not adopted the wording suggested in the comments.

Several comments suggested that the final rulemaking provide a section containing detailed, itemized billing and auditing requirements and procedures. The Bureau of Land Management agrees that billing and auditing are extremely important aspects of right-of-way grant and temporary use permit management. In recognition of this importance, careful instructions and detailed guidance on this point are being developed in manual form for issuance to Bureau of Land Management field offices at the same time this final rulemaking becomes effective. These procedures provide for close coordination between an applicant and the Bureau of Financial Management throughout the life of a Category V project. Work completed on each project will be closely monitored as to the nature of the activity, time expended, employee involvement, and date of occurrence and will be displayed on a project log. All monies received will be accounted for through the use of accounting devices and a special project detail list. This information will be available for review by an applicant. Finally, applicants are encouraged to work closely with the authorized officer to review financial records on a periodic basis to prevent errors, omissions, or misunderstandings from developing. For these reasons, the final rulemaking has not adopted this suggestion and makes no changes in this portion of the proposed rulemaking.

Several comments wanted the proposed rulemaking revised to further reduce the need for new studies. This revision would be accomplished by including in the final rulemaking a provision requiring the use of existing studies unless the need for new studies were justified. One of the comments gave the example of an instance where a new transmission line is to be built within an existing transmission line corridor.

The category definitions contained in the proposed and final rulemakings stress the use of existing data when it is available. Additionally, where an application is determined to be in Category V, the proposed and final rulemakings require coordination between the Bureau of Land Management and an applicant which will provide full consideration of a detailed work analysis, as well as evaluation of existing data, on a case-by-case basis. Current bureau policy requires the use of existing right-of-way corridors to the greatest extent possible. This policy is based on the fact that a significant amount of data has already been collected as part of the corridor designation process, thereby reducing the level of additional activities required for approval of subsequent applications that fall in a corridor. While this is an important issue, existing policy and the provisions of the proposed rulemaking provide detailed guidance in this area; therefore the final rulemaking has been adopted without changing the provisions of the proposed rulemaking.

Editorial and grammatical changes as needed have been made by the final rulemaking.

The principal author of this final rulemaking is Darrel Barnes, Division of Rights-Of-Way, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes made by this final rulemaking will not substantially increase the payments made by applicants for the processing and monitoring of their applications for right-of-way grants or temporary use permits. The changes made by the final rulemaking will make the procedures for reimbursement of costs fairer for users and will recover for the United States a greater portion of the costs incurred in handling applications for right-of-way grants or temporary use permits. The impact of the final rulemaking will be the same, regardless of the size of the entity applying for a right-of-way grant or temporary use permit.

The information collection requirements contained in this final rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1004–0157.

List of Subjects in 43 CFR Part 2800

Administrative practice and procedure, Communications, Electric power, Highways and roads, Pipelines, Public lands—rights-of-way.

Under the authority of Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761–1771), Part 2800, Group 2800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior.

April 30, 1987.

PART 2800—[AMENDED]

1. The authority citation for part 2800 continues to read:

Authority: 43 U.S.C. 1761–1771.

2. Section 2800.0–5 is amended by adding new paragraphs (o) through (t) to read:

§ 2800.0–5 Definitions.

* * * * *

(o) "Actual costs" means the financial measure of resources expended or used by the Bureau of Land Management in processing a right-of-way application or monitoring the construction, operation and termination of a facility authorized by a grant or permit. "Actual costs" includes both direct and indirect costs, exclusive of management overhead.

(p) "Monetary value of the rights and privileges sought" means the objective value of the right-of-way or permit or what the right-of-way grant or temporary use permit is worth in financial terms to the applicant.

(q) "Cost incurred for the benefit of the general public interest" (public benefit) means funds expended by the United States in connection with the processing of an application for studies and data collection determined to have value or utility to the United States or the general public separate and apart from application processing.

(r) "Public service provided" means tangible improvements, such as roads, trails, recreation facilities, etc., with significant public value that are expected in connection with the construction and operation of the project for which a right-of-way grant is sought.

(s) "Efficiency to the Government processing" means the ability of the United States to process an application with a minimum of waste, expense and effort.

(t) "Management overhead costs" means costs associated with the Bureau directorate, including all State Directors and the entire Washington Office staff, except where a member of such staffs is required to perform work on a specific right-of-way or temporary use permit case.

§ 2802.1 [Amended]

3. Section 2802.1(c) is amended by removing from where it appears the citation "§ 2803.1–1" and replacing it with the citation "Subpart 2808".

§ 2802.4 [Amended]

4. Section 2802.4(a) is amended by removing from where it appears the citation "§ 2803.1–1" and replacing it with the citation "Subpart 2808".

§ 2802.5 [Amended]

5. Section 2802.5(a)(1) is amended by removing from where it appears the citation "§ 2803.1–1" and replacing it with the citation "Subpart 2808".

§ 2803.1–1 [Removed]

6. Section 2803.1–1 is removed in its entirety.

§ 2803.6–5 [Amended]

7. Section 2803.6–5(d) is amended by removing from where it appears the citation "§ 2803.1–1" and replacing it with the citation "Subpart 2808".

8. A new Subpart 2808 is added to read:

Subpart 2808—Reimbursement of Costs

Sec.

Subpart 2808—Reimbursement of Costs

§ 2808.1 General.

(a) An applicant for a right-of-way grant or temporary use permit under this part shall reimburse the United States in advance for the expected reasonable administrative and other costs incurred by the United States in processing the application, including the preparation of any reports or statements pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), prior to the United States having incurred such costs.

(b) The regulations in the subpart do not apply to the following:

(1) Federal agencies;

(2) State and local governments or agencies or instrumentalities thereof when a right-of-way grant or temporary use permit is granted for governmental purposes benefiting the general public. However, if the principal source of revenue results from charges being levied on customers for services similar to those rendered by a profitmaking corporation or business, they shall not be exempt; or

(3) Cost share roads or reciprocal right-of-way agreements.

§ 2808.2 Cost recovery categories.

§ 2808.2–1 Application categories.

(a) The following categories shall be used to establish the appropriate nonrefundable fee for each application pursuant to the fee schedule in § 2808.3–1 of this title:

(1) *Category I.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the data necessary to comply with the National Environmental Policy Act and other statutes are available in the office of the authorized officer or from data furnished by the applicant; and no field examination is required.

(2) *Category II.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the data necessary to comply with the National Environmental Policy Act and other statutes are available in the office of the authorized officer or from data furnished by the applicant; and 1 field examination to verify existing data is required.

(3) *Category III.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the data necessary to comply with the National Environmental Policy Act and other statutes are available in the office of the authorized officer or from data furnished by the applicant; and 2 field examinations to verify existing data are required.

(4) *Category IV.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which some original data are required to be gathered to comply with the National Enviromental Policy Act and other statutes; and 2 or 3 field examinations are required.

(5) *Category V.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the gathering of original data are required to comply with the National Enviromental Policy Act and other statutes; and 3 or more field examinations are required.

§ 2808.2–2 Category determination.

(a) The authorized officer shall determine the appropriate category and collect the required application processing fee pursuant to §§ 2808.3–1 and 2808.5 of this title before processing an application. A record of the authorized officer's category determination shall be made and given to the applicant. This determination is a final decision for purposes of appeal under § 2804.1 of this title. Where an appeal is filed, actions pending decision on appeal shall be in accordance with § 2808.6 of this title.

(b) During the processing of an application, the authorized officer may change a category determination to place an application in Category V at any time it is determined that the application requires the preparation of an environmental impact statement. A record of change in category determination under this paragraph

shall be made and furnished to the applicant. The revised determination is appealable in the same manner as an original category determination under paragraph (a) of this section. No other changes of category determination shall be permitted.

§ 2808.3 Fees and payments.

§ 2808.3-1 Application fees.

(a) The fee by category for processing an application for a right-of-way or temporary use permit is:

Category	Fee
I	$125
II	300
III	550
IV	925
V	[1]

[1] As required.

(b) Where the amount submitted by the applicant under paragraph (a) of this section exceeds the amount of the required fee determined by the authorized officer, the excess shall be refunded. If requested in writing by the applicant, the authorized officer may apply all or part of any such refund to the grant monitoring fee required under § 2808.4 of this title or to the rental payment required by § 2803.1-2 of this title.

(c) Upon a determination that an application falls under Cagetory V:

(1) The authorized officer shall:

(i) Complete a preliminary scoping of the issues involved;

(ii) Prepare a preliminary work plan;

(iii) Develop a preliminary financial plan, estimating the actual costs to be incurred by the United States in the processing of the application; and

(iv) Discuss funding availability, options for cost reimbursement (i.e., a determination of actual costs under section 304(b) of the Act, paying all actual costs, or selecting the 1 percent ceiling), and information to be submitted by the applicant, including construction costs and other financial information.

(2) An applicant/holder may submit a written analysis of the estimated actual cost showing specific monetary value considerations, public benefits, public services, or other data or information which would support a finding that an application for a right-of-way grant or temporary use permit qualified for a reduction or waiver of cost reimbursement under section 303(b) of the Act or § 2808.5 of this title. If the applicant elects a cost analysis under this paragraph, the provisions of paragraph (f) of this section shall not apply.

(d) The authorized officer shall discuss the preliminary plans and data and verify the information that may be submitted under paragraph (c) of this section by the applicant. The applicant is encouraged to do all or part of any special study or analysis required in connection with the processing of the application to standards established by the authorized officer.

(e) After coordination with the applicant as required by paragraph (d) of this section, the authorized officer shall develop final scoping, work and financial plans which reflect any work the applicant agrees to do and complete a final estimate of the amount of the actual costs to be reimbursed by the applicant, giving consideration to the factors set forth in section 304(b) of the Act.

(f) An applicant may elect to waive consideration of reasonable costs under paragraph (e) of this section and either: (1) Agree to pay all actual costs incurred by the United States in processing the application and monitoring the grant or temporary use permit; or (2) pay the actual costs of processing the application and monitoring the right-of-way grant up to the amount estimated by the authorized officer to equal 1 percent of the applicant's planned costs of construction of the project on the public lands for which a right-of-way grant is sought. Under this alternative, the applicant shall not be responsible for actual costs exceeding 1 percent of the estimated cost of constructing the proposed facilities on public lands. The request for a waiver shall be in writing and filed with the authorized officer.

(g) The applicant shall reimburse the United States for the applicant's share of costs, as determined under paragraphs (e) and (f) of this section, before the grant or permit shall issue.

(h) Where a State Director grants a reduction or waiver of cost reimbursement under the provisions of paragraph (e) of this section and/or § 2808.5 of this title or where the reimbursable costs of processing an application are determined to exceed 1 percent of the cost of construction of the facilities under paragraph (f) of this section, the necessary funding shall be available either through the Bureau's appropriation process or otherwise made available for the processing of the application or such processing shall not proceed.

(i) The authorized officer shall provide the applicant with a written determination of the reasonable costs to be reimbursed by the applicant or holder and those that will be funded by the United States under paragraphs (e) and (f) of this section and § 2808.5 of this title. This determination is a final decision for purposes of appeal under § 2804.1 of this title. Where an appeal is filed, actions pending decision on appeal shall be in accordance with § 2808.6 of this title.

§ 2808.3-2 Periodic advance payments.

(a) The authorized officer may periodically estimate the reasonable costs expected to be incurred by the United States for specific work periods in processing an application determined to be in Category V or monitoring the right-of-way grant or temporary use permit under the provisions of § 2808.3-1 (e) through (f) of this title and shall notify the applicant of the estimated amount to be reimbursed for the period and the applicant shall make payment of such estimated reimbursable costs prior to the incurring of such costs by the United States.

(b) If the payments required by paragraph (a) of this section exceed the actual costs incurred by the United States, the authorized officer shall adjust the next billing to reflect the overpayment, or make a refund from applicable funds under the authority of 43 U.S.C. 1734. An applicant shall not set off or otherwise deduct any debt due it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(c) The authorized officer may re-estimate the actual costs determined under § 2808.3-1 (e) through (g) of this title at any time it is determined that a change warranting a re-estimate occurs. An appeal of a re-estimate shall be treated in the same manner as an original estimate made under § 2808.3-1(e) of this title.

(d) Before issuance of a right-of-way grant or temporary use permit, an applicant shall pay such additional amounts as are necessary to reimburse the United States in full for any costs incurred, but not yet paid under § 2808.3-1(h) of this title.

§ 2808.3-3 Costs incurred for a withdrawn or denied application.

(a) An applicant whose application is denied is liable for any costs incurred by the United States in processing the application. Those amounts that have not been paid are due within 30 days of the receipt of a bill from the authorized officer identifying the amount due.

(b) An applicant who withdraws an application before a grant or temporary use permit is issued is liable for all costs incurred by the United States in processing the application up to the date the authorized officer receives the written notice of withdrawal, and for costs subsequently incurred in terminating the processing of said

application. Those amounts that have not been paid are due within 30 days of receipt of a bill from the authorized officer identifying the amount due.

§ 2808.3–4 Joint liability for payments.

(a) When 2 or more applications for a right-of-way grant are filed which the authorized officer determines to be in competition with each other, each applicant shall reimburse the United States as required by § 2808.3 of this title, subject however, to the provisions of § 2808.1(b) of this title. Each applicant shall be responsible for the reimbursement of the reasonable costs identified with his/her application. Costs that are not readily identifiable with either of the applications, such as costs for portions of an environmental impact statement that relate to all of the applications, generally, shall be paid by each applicant in equal shares or such other proportion as may be agreed to in writing by the applicants and the authorized officer prior to the United States incurring such costs.

(b) When, through partnership, joint venture or other business arrangements, more than 1 person, partnership, corporation, association or other entity apply together for a right-of-way grant or temporary use permit, each such applicant shall be jointly and severally liable for costs under § 2808.3 of this title for the entire system, subject however, to the provision of § 2808.1(b) of this title.

§ 2808.4 Reimbursement of costs for monitoring.

(a) A holder of a right-of-way grant or temporary use permit for which a fee was assessed under § 2808.3 of this title shall, prior to the United States incurring such costs, reimburse the United States for costs to be incurred by the United States in monitoring the construction, operation, maintenance and termination of authorized facilities on the right-of-way grant or temporary use permit area, and for protection and rehabilitation of the lands involved, under the following schedule:

(1) The same category as determined under § 2802.2–2 of this title for processing of an application for a right-of-way grant or temporary use permit shall be used for monitoring. The one-time fee for monitoring a right-of-way grant or temporary use permit determined to be in Categories I through IV is as follows:

Category	Fee
I	$50
II	75
III	100
IV	200

[1] Shall be included with costs determined under § 2808.3.

(2) The monitoring fee for a right-of-way grant or temporary use permit determined to be in Category V shall be included with the costs determined under §§ 2808.3–1 through 2808.3–4 of this title.

(b) The holder shall submit the payment for the cost of monitoring required by paragraph (a)(1) of this section or the first periodic advance payment required under § 2808.3–2 of this title, as appropriate, along with the written acceptance of the terms and conditions of the grant or permit. No right-of-way grant or temporary use permit shall be issued until the required payment is made.

§ 2808.5 Other cost considerations.

(a) The State Director, after consultation with an applicant or holder making a request for a reduction or waiver of reimbursable costs under § 2808.3–1 of this title, may reduce or waive reimbursement required under §§ 2808.3–1 through 2808.3–4 of this title. In reaching a decision, the State Director may require the applicant/holder to submit in writing any information or data in addition to that required by § 2808.3–1(c) of this title that he/she determines to be needed to support a proposed finding that an application, grant or temporary use permit qualifies for a reduction or waiver of cost reimbursement. Action on a Category V application shall be suspended pending the State Director's decision.

(b) The State Director may base the decision to reduce or waive reimbursable costs on any of the following factors:

(1) The applicant's/holder's financial condition is such that payment of the fee would result in undue financial hardship;

(2) The application processing or grant monitoring costs are determined to be grossly excessive in relation to the costs of constructing the facilities or project requiring the right-of-way grant or temporary use permit on the public lands;

(3) A major portion of the application processing or grant monitoring costs are the result of issues not related to the actual right-of-way grant or temporary use permit;

(4) The applicant/holder is a nonprofit organization, corporation or association which is not controlled by or a subsidiary of a profitmaking enterprise;

(5) The studies undertaken in connection with the processing of the application have a public benefit;

(6) The facility or project requiring the right-of-way grant will provide a special service to the public or to a program of the Secretary;

(7) A right-of-way grant is needed to construct a facility to prevent or mitigate damages to any lands or improvements or mitigate hazards or danger to public health and safety resulting from an Act of God, an act of war or negligence of the United States;

(8) The holder of a valid existing right-of-way grant is required to secure a new right-of-way grant in order to relocate facilities which are required to be moved because the lands are needed for a Federal or federally funded project, if such relocation is not funded by the United States;

(9) Relocation of a facility on a valid existing right-of-way grant requires a new or amended right-of-way grant in order to comply with the law, regulations or standards of public health and safety and environmental protection which were not in effect at the time the original right-of-way grant or temporary use permit was issued; or

(10) It is demonstrated that because of compelling public benefits or public services provided, or for other causes, collection of reimbursable costs by the United States for processing an application, for a grant or permit would be inconsistent with prudent and appropriate management of the public lands and the equitable interest of the applicant/holder or of the United States.

(c) The State Director may consider a reduction or waiver of fees under this section in determining reimbursable costs made under § 2808.3 of this title. Said determination is a final decision for purposes of appeal under § 2804.1 of this title. Where an appeal is filed, actions pending decision on appeal shall be in accordance with § 2808.8 of this title.

(d) Notwithstanding a finding by the State Director that there is a basis for reduction of the costs required to be reimbursed under this subpart, the State Director may not reduce such costs if funds to process the application(s) or to monitor the grant(s) or permit(s) are not otherwise available or may delay such decision pending the availability of funds.

§ 2808.6 Action pending decision on appeal.

(a) Where an appeal is filed on an application determined under § 2808.2–2(a) of this title to be in Categories I

through IV, an application shall not be accepted for processing without payment of the fee for such application according to the category determined by the authorized officer; however, when payment is made, the application may be processed and, if proper, the grant or temporary use permit issued. The authorized officer shall make any refund or other adjustment directed as a result of an appeal.

(b) Where an appeal is filed for an application determined under § 2808.2–2(a) of this title to be in Category V or for a related cost reimbursement determination under § 2808.3–1 (e) through (g) or § 2808.5(d) of this title, processing of the application shall be suspended pending the outcome of the appeal.

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43 CFR Parts 2800 and 2880

[Circular No. 2595; AA–330–07–02–NCPF–2410]

Rights-of-Way, Principles and Procedures; Rental Determination

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends Parts 2800 and 2880 of Title 43 of the Code of Federal Regulations to provide a rental schedule for most linear rights-of-way granted under section 28 of the Mineral Leasing Act of 1920, as amended and supplemented, and title V of the Federal Land Policy and Management Act of 1976. The rental schedule contained in the final rulemaking is based on the following three factors: (1) A typical valuation of lands currently occupied or expected to be occupied by linear right-of-way grants, using county boundaries and zones varying by $100 increments (one $50 zone); (2) the estimated impacts of each type of right-of-way grant on land utilization divided into two groups of right-of-way types; and (3) an interest rate for converting the valuation to a basic dollar per acre annual rental for each land value zone and right-of-way group. In order to keep this initial rental schedule current, it would be adjusted each year using the annual change in the Gross National Product Implicit Price Deflator Index. The final rulemaking also provides that existing linear right-of-way grants not covered by the rental schedule may be brought under it upon reasonable notice to the holder. In addition, the final rulemaking is designed to substantially reduce the need for individual appraisal or rentals for new linear right-of-way grants, establish consistent rationale for determination of rental, reduce the differences between procedures presently used by the U.S. Forest Service and the Bureau of Land Management, resolve conflicts which have led to numerous appeals of rental determinations and reduce both governmental and industrial administrative costs. Finally, the final rulemaking establishes procedures for site type right-of-way grants, such as communication sites, where there is competitive interest, and rent in the form of a royalty or a fixed percentage of the holder's gross receipts might be appropriate.

EFFECTIVE DATE: August 7, 1987.

ADDRESS: Suggestions or inquiries should be submitted to: Director (330), Bureau of Land Management, Room 3660, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:
Ted Bingham, (202) 343–5441
or
Robert C. Bruce, (202) 343–8735

SUPPLEMENTARY INFORMATION: The proposed rulemaking amending procedures for determination of annual rentals for right-of-way grants and temporary use permits was published in the **Federal Register** on September 5, 1986 (51 FR 31886), with a comment period that closed on October 20, 1986. A total of 49 comments were received: 12 from businesses engaged in the oil and gas industry; 12 from electric and telephone firms; 6 from industry associations; 8 from Federal agencies; 4 from municipal service districts; 4 from individuals; 2 from miscellaneous businesses; and 1 from a large land owner. The comments and the action taken on them are discussed below.

Use of a Schedule

Most of the comments favored use of a schedule primarily because of: (1) The long term certainty provided by a schedule approach; and (2) the administrative convenience, including cost savings both to the Bureau of Land Management and the applicant/holder. A few of the comments expressed the view that the rent for each right-of-way grant should be determined by an individual appraisal. One comment suggested that all types of right-of-way grants be subject to a schedule. After the effective date of this final rulemaking, a schedule will be used for most linear right-of-way grants and temporary use permits issued by the Bureau. The formula developed to calculate the annual rental fee is:

1st year—Rental fee (Base) = Right-of-Way Zone Value × impact adjustment × interest rate × number of acres impacted.

2nd year and thereafter—Rental fee = Rental base × annual index.

Zones

In the Notice of Intent to Propose Rulemaking published in the **Federal Register** on January 18, 1985 (49 FR 2697), the Bureau of Land Management proposed development of zones for individual right-of-way types or groups. The comments were favorable on use of a zone concept approach and this concept has been used in this final rulemaking.

In developing the zones that are used in the proposed and final rulemakings, the Bureau of Land Management, in cooperation with the U.S. Forest Service, reviewed the typical raw land values for the types of lands administered by the two agencies that have in the past been occupied by linear rights-of-way, and under existing plans will be occupied by such rights-of-way in the future. The zones contained in the proposed rulemaking were based on an administrative selection of typical or blended values of agency land by county. Zones of general value in areas of substantial size can be established only through a process of blending the several different values of lands. For any zone there are almost certain to be higher or lower value lands. The zone value and the zone boundaries are judged to be accurate reflections of the general or blended value of the lands in the zone. These values were mapped, reviewed and adjusted, resulting in the placement of each county (except Coconino County, Arizona, which is split by the Colorado River), in one of eight zones ranging in value from $50 to $1,000 per acre.

These right-of-way zones are not based on values for urban or suburban residential areas, industrial parks, farms or orchards, recreational properties, or such types of land. Since the Bureau of Land Management plans to avoid authorizing linear right-of-ways through attractive public use areas such as lakeshores, streamsides, and scenic highway frontages, the value zones do not reflect these types of land values. Also, zone values do not reflect the land value of private lands or other ownerships, unless the lands are comparable with the lands typically occupied by a right-of-way grant under permit from the Bureau of Land Management.

Specific sites within the zones may have actual values higher or lower than the value assigned to the zone, and zones have been established by State and County jurisdiction for administrative convenience.

Also, the value of timber is not included in the value assigned to the zones, because the timber usually is paid for separately and removed when the right-of-way is cleared.

Most of the comments supported the use of a county zone system based on blended land values, while nearly all of the comments objected to any use of a "going rate" value, although one comment specifically recommended use of the "going rate."

A few comments suggested that the final rulemaking use zones based on other than county boundaries, such as vegetation types, or precisely identified land value zones. The adoption of this suggestion would be contrary to the simplified zone-schedule concept set forth in the proposed rulemaking and the suggestion has not been adopted by the final rulemaking.

Numerous comments were received on the individual zone or county blended values used in the proposed rulemaking. Most of the comments had some questions about individual areas, but accepted the values overall. Some were specific as to the value of a county or counties, some simply questioned the value of a county or group of counties. The comments raised specific questions about Clark County, Nevada and Big Horn, Crook, Hot Springs, Washakie, and Weston Counties, Wyoming. After carefully reviewing all data on the counties, it was determined that Clark, Hot Springs, and Washakie Counties were placed in value zones that were too high. This same review indicated that Big Horn, Crook, and Weston counties had been placed in appropriate zones. In keeping with the original intent of minimizng the number of zones, the zone designations attached to this final rulemaking have changed Hot Springs and Washakie Counties to the adjacent $100 zone and adjusted Clark County to a $50 zone.

The zone values utilized for setting the per acre rental in the rental schedule in the final rulemaking will not be changed unless a review of the cumulative change in either of two indexes (one-year Treasury Rate Index and Gross National Product Implicit Price Deflator Index) used as the basis of the rental schedule would require a change in the regulations to change the rental schedule. The two indexes and their use is discussed in the section on Rental Formula Review in this preamble. Any change in the rental schedule would be made through the rulemaking process—issuance of a proposed rulemaking with an opportunity for public review and comment, followed by the issuance of a final rulemaking.

Adjustments to Zone Values

The proposed rulemaking contained two groups of rights-of-way with different adjustments to the zone values to reflect the lessened impacts of each type of right-of-way on land utility. The proposed rulemaking provided for one group which covers oil and gas and other energy pipelines, roads and ditches, and canals and would adjust the zone values for that group by 20 percent. For the second group, covering electric and telephone lines, nonenergy pipelines, and other linear rights-of-way, the proposed rulemaking would adjust the zone value 30 percent, indicating a lesser impact on land utilization. As with zone values, the concept sought to limit groups of right-of-way types rather than provide a number of different group types with only minor differences in percentage adjustments. This concept was formulated with direct input from users, user groups, and trade associations in meetings held in early 1986.

While many of the comments on the proposed rulemaking supported the use of the concept presented in the proposed rulemaking, a number of comments objected to the grouping of oil and gas pipelines with the more intrusive ditches, canals and roads, suggesting oil and gas pipelines be: (1) Included with electric and telephone lines with a 30 percent impact adjustment; or (2) placed in a 40 percent impact adjustment category. Most of the comments from western utilities, while accepting the two group concept, suggested that a distinction be made between transmission and distribution (35 kv and under) lines. The comments also suggested that distribution lines be given an 85 percent impact adjustment.

Many of the comments that suggested the final rulemaking provide a larger impact adjustment referred to market conditions in the purchase of such easements from private landowners. This suggestion has not been adopted by the final rulemaking because a policy decision of the Department of the Interior specifically excluded the use of market conditions, as reflected in the proposed rulemaking. In addition, many of these comments point out that rights-of-way for electric distribution lines and like systems can be obtained at no or minimal cost due to the benefits received by the private landowner as a result of having the use of the utility. While it may be true that the private landowner may benefit from this system, this same benefit is not generally applicable to agencies that have jurisdiction of public lands. Under management directives given the agencies by Congress, the benefit of the availability of utilities does not normally inure to the public lands.

Upon review of the proposed rulemaking and the comments, the final rulemaking has adopted the 20 percent impact adjustment provision for oil and gas and other energy related pipelines. In the interest of limiting the number of groupings, canals, ditches, and roads will be included in the grouping with oil and gas and related energy pipelines, rather than creating a new grouping for canals, ditches, and roads with a 10 or 15 percent impact adjustment.

While agreeing that electric distribution lines (those up to 35 kv) are less intrusive than electric transmission lines, this is primarily a function of the size (width) of the right-of-way grant needed. The schedule contained in the proposed and final rulemaking accommodates the width difference with the acreage figure in the formula used to determine rentals. Had a decision been made to use a procedure that used a "going rate" approach of a value per pole, for instance, this difference would have warranted a separation between distribution and transmission type facilities.

The western utilities in their comments on earlier proposals and this proposed rulemaking contended that rentals should be reduced or eliminated for rights-of-way for gas or electric or distribution lines which provide service to the United States, its lessees or permittees, or residential or agricultural customers because it provides a public benefit/service. The rental fee schedule provided in the proposed and final rulemakings will be applicable only when holders are required to have a right-of-way and pay rental under existing law and regulations. Distribution lines whose sole purpose is to serve an agency of the United States may qualify for a reduction or waiver of rental under the provisions of the rulemakings. However, in those instances where the distribution lines are provided to serve a lessee or permittee on public lands, this service is provided because said lessee or permittee requested it and the utility applied for a right-of-way grant across public lands to provide that service, a service that is charged to the user and provides income to the utility. The right-of-way grants made in the latter instance require the payment of rental.

On a related issue, the comments suggested that it would be unfair to require that the rental for service to lessees and permittees located at a distance from existing service be shared by all of their users—rather such rental costs should be paid by the lessee or permittee needing the service. Since the utility applies for and holds the right-of-way grant on the public lands, it is responsible for that grant and the required rental. The resolution of this issue is not within the purview of the authority of the Bureau of Land Management, but should be worked out between the utilities and the appropriate State public utilities commission under procedures it provides for service charges.

In addition to the above issues raised in their comments, some of the utilities raised the point that based on the clear difference between transmission and distribution right-of-way easements, and on the need for cost-effective administration, that:

- Federal distribution easement valuation should be based on typical industry practices relating to the extent of the rights required.
- Federal distribution easements should be consolidated into one master agreement for each Forest Service or Bureau of Land Management district, to assure cost-effective administration.
- Because of the negligible market value of Federal distribution easements, right-of-way rental fees should be based solely on an administrative cost schedule.

The following information was presented in the comments as the basis of the three recommendations made above:

- Utilities should not be compelled to pay more for distribution easements on Federal lands than they pay on private lands. The proposed rulemaking focuses on transmission easement valuation based on rights far in excess of those commonly required for a distribution line. The net effect is utilities pay excessive fees for the use of easements on Federal lands.
- Administration of low value easements on Federal lands is more costly than revenue generated by the fees for those easements. Applying the annual rental formula provided in the proposed rulemaking to zone 5 ($500/ac), the projected annual rental for a mile of distribution line is $20/mile. This would not offset the annual cost incurred by the United States in administering the easement.
- Distribution easements on private lands—based on rights required—are valued at a 10 percent fee value.

The first recommendation asked that easements for distribution lines be valued by sales information based on what industry is paying for similar rights on private lands. This is what is commonly called the "going rate method", a concept that was dropped from consideration in the proposed rulemaking in response to recommendations from industry that the rental schedule be based on the value of the lands crossed by the right-of-way grant.

The land value method was used as the basis for developing the rental schedule contained in the proposed and final rulemakings. Since the rental schedule includes all lands which are nominally expected to be occupied by right-of-way grants under the jurisdiction of the Bureau of Land Management and lands in the National Forest System, the value zones used were created to reflect unit values. The zone values are a blend of higher and lower values that have been combined for administrative simplicity and economic efficiency. For this same reason, the impact adjustment factors of 20 and 30 percent were considered also to be a blend of higher and lower factors and if more categories are created, the original factors would also have to be changed to reflect the removal of part of the original factors.

The comments pointed out that the March 19 response of the agencies to the concerns raised by the utilities in their discussions with the agencies did not address the distribution vs transmission concerns raised by the utilities. What was not pointed out in the comments was that the impact adjustment recommended by the agencies was 0 and 20 percent at the time of the response and not the 20 and 30 percent set forth in the proposed rulemaking. It was during the series of meetings between the agencies and industry representatives that an approach was outlined which resulted in an administratively simple and economically efficient method in determining rental values. Part of the consideration given for arriving at the impact adjustments was the issue of transmission vs distribution, not only for electric systems, but also for oil and gas systems.

The agencies agree that for the most part industry acquires distribution line right-of-way easements at no cost or at a very nominal cost. However, as pointed out earlier in this preamble, these are granted by private landowners who benefit from having the lines located on their property. During the joint market survey conducted by the Bureau of Land Management and the U.S. Forest Service, it was found that in the western part of the United States, 77 percent of the non-benefitting private landowners charged for easements on their lands. It is the practice of both agencies to waiver fees for facilities that exclusively serve the United States. However, it needs to be emphasized that most right-of-way easements across the public lands are not for the purpose of solely serving the United States.

After careful review of the comments, it was concluded that the valuation process provided in the proposed and final rulemakings provides due consideration to distribution lines and that the rental schedule structure of only two categories meets and supports the objective of developing an administratively simple and economically efficient approach to determining rental value.

The second recommendation discussed above was that distribution easements should be consolidated into one master agreement for each Bureau of Land Management and Forest Service district to assure cost effective administration. This recommendation has both benefits and detriments. Each line, whether it is a new addition, a modification, or termination, must be examined due to, among other requirements, agency land use plans, the National Environmental Policy Act, and title V of the Federal Land Policy and Management Act. Use of a single master file could complicate, rather than ease, administrative efficiency. The utility companies are encouraged to discuss implementation of such a master approach with the appropriate Bureau or Service District office to determine if some agreement can be reached. In any event, the Bureau will use a consolidated billing system for each State when this rental schedule is fully implemented by the final rulemaking.

In response to the third recommendation discussed above, the rental schedule set forth in the proposed and final rulemaking is an administratively developed schedule as opposed to a detailed appraisal being required for each right-of-way grant.

For the reasons set out above, the final rulemaking has made no change in the right-of-way type groupings or in the adjustment to the zone value provided in the proposed rulemaking.

Annualization

The proposed rulemaking provided a per acre annual rental that resulted from multiplying the adjusted zone value in the schedule by the 1-year Treasury Securities "Constant Maturity" rate (7.07 percent was used in the proposed

rulemaking). The comments on this point were generally supportive. Some of the comments indicated a preference for use of a rate more closely aligned with the real estate market, but were willing to accept the 1-year rate concept of the proposed rulemaking. Some of the comments requested that the rate be a fixed rate that remained in effect until there was a plus or minus 50 percent change in the three year average. As with the zone values and impact adjustment, the figures in the rental schedule are used for the purpose of setting the first years rental rate, which will remain fixed until adjusted under the procedure outlined under Rental Formula Review, discussed later.

In connection with required reviews of the entire schedule and required annual adjustments, a number of the comments suggested use of second quarter data rather than third quarter data to allow additional time to review and budget for changes resulting from the changes. The final rulemaking has adopted these changes and will provide for the per acre rental by zone to be annualized by applying the 1-year Treasury Securities "Constant Maturity" rate for June 30 (6.41 percent for June 30, 1986), as published by the Federal Reserve in statistical release report H.15 (519).

Annual Indexing

The provisions of the proposed rulemaking provided that the per acre rental would be adjusted each year based on the third quarter's change in the Gross National Product Implicit Price Deflator Index as published in the "Survey of Current Business" of the Department of Commerce, Bureau of Economic Analysis. Comments on this issue ranged from support of the provisions of the proposed rulemaking, to support of the use of a different index, to holding rentals level without adjustment for a five-year period.

Several of the comments suggested the use of the Implicit Price Deflator Index for the Gross Private Domestic Investment-Nonresidential Fixed Index. In further research of the question of which of the indexes to use, the Department of Commerce was consulted and recommended the use of the broader based Gross National Product Implicit Price Deflator. This index provides sufficient stability while accurately reflecting total economic change. Both the Consumer Price Index and the Farm Real Estate Values were considered or discussed as the index that should be used, but both had been previously excluded from further consideration.

The final rulemaking utilizes the Gross National Product Implicit Price Deflator Index as provided in the proposed rulemaking for the purpose of making the annual adjustment of the per acre rental schedule.

The comments also suggested that in order to facilitate budgeting and related actions for the Bureau of Land Management, the U.S. Forest Service and the holder that the end of the second quarter be used as the basis for the adjustment of the rental per acre schedule. The Gross National Product Implicit Price Deflator Index is published on a quarterly and annual basis. As suggested in some of the comments, the final rulemaking has adopted the second quarter index rather than the third quarter index provided in the proposed rulemaking.

A few comments suggested that the table showing the rental per acre by State and county be published each year in the **Federal Register**. This suggestion would result in unnecessary costs. With the change to use of the second quarter index, new tables will be prepared and be available from the Bureau of Land Management field offices by the end of the third quarter. The new tables will normally be available by October 1 of each year.

Rounding of Annual Rental

The proposed rulemaking provided that the mathematical calculation for the rental for the ensuing year be rounded to the nearest dollar; amounts between $0.01 and $0.50 would be dropped. This provision of the proposed rulemaking has been adopted by the final rulemaking without change.

One Acre Minimum Requirement

The proposed rulemaking provided that the rental for a right-of-way grant embracing less than one acre would be calculated as if it embraced a full acre for administrative simplicity. While a number of the comments supported this provision, one comment objected to it on the basis that it held a number of right-of-way grants that were less than one acre in size. This comment recommended that the final rulemaking remove the minimum provision and provide that the acreage of a right-of-way grant be calculated/estimated to two decimal points. After review of this provision and the comments, the final rulemaking has deleted the minimum requirement because the minimum can result in excessive rentals under certain circumstances. However, the final rulemaking has not adopted the suggestion that right-of-way grants be figured to two decimal points because that could result in survey costs to the holder that might be more than would be saved with such detailed calculations. However, in those instances where the detail needed to figure the acreage to two decimal points is available to the Bureau of Land Management, it will calculate acreage to two decimal points; otherwise the acreage will be calculated to a tenth of an acre.

Calendar Year Rental Period

Under existing regulations, the rental period for a right-of-way grant issued by the Bureau of Land Management is the anniversary date of the individual right-of-way grant. Upon full implementation of the procedures provided by the proposed and final rulemakings, all right-of-way grants would have a calendar year rental period. All of the comments on this point were supportive of this process, with a few comments suggesting some clarifying language which was adopted by the final rulemaking.

In converting existing right-of-way grants to a calendar year billing period, the conversion year rental will be prorated by the months remaining in the calendar year against a full year's rental, i.e., if three months remain in the rental period being converted, the rental would be 3/12 of the annual rental.

Consolidated Billing

As part of the change to a calendar year billing period made by the proposed rulemaking, the Bureau of Land Management would provide a single consolidated annual billing to entities holding more than one right-of-way grant within a given State. If an entity holds right-of-way grants in more than one State, a separate billing will be issued for each State in which a right-of-way grant is held. This would ease administrative workloads and provide cost savings to right-of-way grant holders. This concept was supported by most of the comments and this consolidated billing process will be implemented by the Bureau when the final rulemaking becomes effective and grants have been converted to the calendar year rental period. The Bureau expects to have all linear right-of-way grants converted to a calendar year billing basis within four years of the effective date of this final rulemaking.

Phase In

The final rulemaking provides that where the fees required for existing right-of-way grants would increase the annual rental by more than $100 and the increase in annual rental would be in excess of 100 percent, only the amount of the new rental in excess of the 100

percent increase would be phased in in equal increments, plus an annual adjustment, over a 3-year period. While most of the comments on this provision were favorable, a few wanted a 5-year phase in, with a few comments suggesting that any increase over 500 percent be phased in over 5 years. A review of Bureau of Land Management right-of-way grant cases indicates that while 10 to 15 percent might meet the initial $100 and 100 percent increase threshold, only a minor percentage would exceed a $100 and 500 percent increase. Therefore, the final rulemaking has adopted the provisions of the proposed rulemaking without change.

Because questions have arisen about how the phase in process provided by the proposed and final rulemakings will work, the following example is provided. Assume a current rental of $100 per year, a new rental of $500 per year, and an annual adjustment using the second quarter change in the index as the basis of the annual indexing (which for this example is plus 2 percent), then the payments would be:

Year	Prior year's payment	100 percent increase first year	⅓ of increase balance	Amount of annual adjustment	Annual rental
First	$100	+$100	+$100	None =	$300
Second	$300	None	+$100	+$10 =	$410
Third	$410	None	+$100	+$10 =	$520

Advance Payments

The proposed rulemaking retained the provisions in the existing regulations allowing: (1) The authorized officer to require multiple year advance payments when the annual rental is less than $100 per year; and (2) allowing the right-of-way grant holder to make advance payments for not to exceed five years, regardless of the amount of the annual rental. Under the provisions of the proposed rulemaking, if a holder exercises the option of paying a five-year advance payment, any adjustment in the annual rental would be deferred and would be adjusted at the beginning of the sixth year. All of the comments on this provision of the proposed rulemaking supported it and expressed the view that it would be beneficial to the user and the Bureau of Land Management. One comment suggested that advance payments should be discounted. The final rulemaking has adopted the provisions of the proposed rulemaking regarding advance payments without change.

Rental Formula Review

In the proposed rulemaking, cumulative changes in two indexes were established which would require a review of all of the elements in the formula used to determine whether the annual indexing was continuing to reflect fair market annual rental or whether there should be a change in the rental schedule to reflect an overall change. The review would be required when either the Gross National Product Implicit Price Deflator Index had a change of plus or minus 30 percent or the change in the 1-year Treasury rate was plus or minus 50 percent. A majority of the comments addressed this issue, with most supporting a review when the Gross National Product Implicit Price Deflator Index had a change of plus or minus 30 percent, with some of those comments suggesting the use of a different index. A number of comments suggested, as was discussed earlier in this preamble, the use of second quarter data rather than third quarter data.

Most of the comments on this provision of the proposed rulemaking objected to the use of a change in the 1-year Treasury rate of plus or minus 50 percent due to its inherent volatility and its failure to reflect actual changes in land values. A few comments suggested that the final rulemaking use a change of plus or minus 50 percent in the 3-year average of the 1-year Treasury rate. Many of the comments on this issue indicated a belief that the occurrence of a change of plus or minus 50 percent in the 1-year Treasury rate woud result in an automatic change in the rental rate, which is not the case. Under the proposed and final rulemaking such a change would result in a review of the rental schedule to determine if an adjustment is justified, not an automatic adjustment. This provision of the proposed rulemaking has been adopted by the final rulemaking with a change providing for the use of the three-year average of the one-year Treasury rate.

The final rulemaking also retains the provision of the proposed rulemaking that a change of plus or minus 30 percent in the Gross National Product Implicit Price Deflator Index will result in a review of the rental schedule contained in § 2803.1–2(c)(1)(i) of this final rulemaking to determine if an adjustment is justified. For both of the indexes, the change will be measured from the second quarter. The three-year average of the one-year constant Treasury rate as of June 30, 1986, was 8.86%. This rate will be compared with the rate as of June 30 of each succeeding year to determine whether a 50 percent change has occurred (the rate has either dropped to 4.43% or risen to 13.31%). The Gross National Product Implicit Price Deflator Index as of June 30, 1986, was 114.0. This figure also will be compared with the figure in the Index as of June 30 of each succeeding year to determine whether a 30 percent change has occurred (the figure has either dropped to 79.8 or risen to 148.2). It is emphasized that when one or the other of the cumulative changes discussed above occurs, market conditions and business practices will be considered in the review to determine whether there have been sufficiently varied changes that would warrant the proposing of a revision to the rental schedule. If a review shows that a revision of the rental schedule is not warranted, the existing formula will continue to be used until another cumulative change sufficient to trigger a review occurs. If a determination is made that a revision of the rental schedule is warranted, a proposed rulemaking with an opportunity for public review and comment will be published.

Exception to the Schedule

Under the proposed rulemaking, non-linear and those linear rights-of-way having "unique" characteristics would be excluded from rental determinations based on the rental schedule. While a few of the comments supported the provisions of the proposed rulemaking, most of the comments raised objections to what they viewed as an "arbitrary" and poorly defined exception, with suggestions that an exception by specifically identified areas or the conditions for an exception be clearly defined by the final rulemaking. One of the definitions suggested in the comments was related to land values, with a suggestion that the basis for an exception be either a threshold of $4,000 to $5,000 per acre or a per acre value that exceeds the zone value by a factor of 10. One comment suggested that any lands that have been substantially improved might be the basis for an exception. A few of the comments were of the view that there should be no exception. One comment on this point suggested that the final rulemaking provide that the rental schedule be applicable to all rights-of-way, both linear and non-linear.

A number of the comments recommended that appraisal standards be provided to cover non-schedule rental determinations, with the cost of a required appraisal paid by the Bureau of Land Management, with all such individual appraisals being reviewed by a qualified appraiser and being subject to the Department of the Interior's administrative appeal process. Another comment on this point suggested that

the applicant/holder be permitted to provide an appraisal with arbitration if there is a dispute about it.

The final rulemaking provides that the authorized officer must use the fee schedule unless the authorized officer determines that a substantial area within the right-of-way grant area or segment thereof exceeds the zone values by a factor of 10 and expected valuation is sufficient to warrant a separate appraisal. The rental schedule shall be used to calculate the fees for the vast majority of linear right-of-way grants and temporary use permits. Once the rental for a right-of-way grant or temporary use permit has been determined by use of the rental schedule, it will remain under the rental schedule until the holder takes some action that would change the grant, i.e., the holder files an amendment to add additional facilities to the existing grant.

Further, it is current Bureau policy to review all appraisals before they are approved for Bureau use and that all appraisals be prepared in accordance with the standards and format described in the "Uniform Appraisal Standards for Federal Land Acquisition" as published by the Department of Justice and/or as may be required by Bureau Manual 9300. Any rental determination based on an exception of the rental schedule is subject to an appeal (See 43 CFR Parts 2804 and 2884).

Other Changes Made by the Final Rulemaking

The proposed rulemaking provided for the removal of the covenant in § 2881.2 of the existing regulations which requires the right-of-way holder to modify, adapt, or discontinue any oil and gas pipeline use determined to be in conflict with a public use of the public lands. Nearly all of the comments supported this provision of the proposed rulemaking and the final rulemaking has retained it without change. Oil and gas pipeline right-of-way grants can be conditioned through stipulations to address any potential conflicts.

Another change made by the proposed rulemaking was the elimination of the authority of the authorized officer to modify the terms and conditions, other than the bonding provisions, of a right-of-way grant, when an assignment of that grant is made. Again, most of the comments supported this change, with a few making the suggestion that this change not be made applicable to holders who are not required to pay rental. The final rulemaking has not adopted the suggestion that this provision be applicable only to those holders who are paying an annual rental because there is no rationale for this distinction. Right-of-way grants are freely assignable and should not be encumbered with limitations in the absence of convincing reasons.

A third change that would be made by the proposed rulemaking provided for a negotiated fee for multiple assignments in a single action, rather than the fee of $50 per case provided in the existing regulations. Nearly all of the comments supported this change for reasons of equity, and the final rulemaking has adopted this provision of the proposed rulemaking without change.

Reduction or Waiver of Rental

Section 2803.1–2(b) as set forth in the proposed rulemaking provided eight classes or conditions under which the authorized officer is permitted to reduce or waive rentals for a right-of-way grant or temporary use permit. Five of these conditions, subparagraphs 1, 2, 3, and 6, were a restatement of provisions of the existing regulations. Subparagraph 4 was added to provide an exemption from rental payments for facilities financed under the provisions of the Rural Electrification Act as required by Congress in Public Law 98–300. Subparagraph 5 was added by the proposed rulemaking to cover right-of-way grants issued pursuant to Acts repealed by the Federal Land Policy and Management Act, but otherwise subject to the provisions of this proposed rulemaking by the provisions of § 2801.4 of the existing regulations. Finally, subparagraph 7 was added by the proposed rulemaking to cover unique hardship cases. Those making comments on this section were generally supportive.

Four comments on this point suggested that municipal utilities or cooperatives should be excluded from rentals regardless of the fact that their principal source of revenue is from customer charges. This suggested change was based on the view that the Bureau of Land Management has misinterpreted the Federal Land Policy and Management Act, in that it was the intent of Congress to reduce or waive the rental for such municipal utilities. Congress has subsequent to the enactment of the Federal Land Policy and Management Act, considered and rejected a mandatory waiver of rentals for muncipal utilities (See House Report on H.R. 2111, dated September 3, 1983). The adoption of this suggested change by the final rulemaking would create a condition that is unfair and anticompetitive; it would differentiate between municipal and investor-owned utilities, therefore, the suggested change has not been adopted by the final rulemaking.

A number of the comments suggested that public utilities, as a class, be provided reduced rentals, with some of the comments suggesting a total exemption for such utilities. Chief among the reasons given by the comments for their suggestions were that public utilities: (1) Provide for a public need; (2) are required to provide service even though some of that service may not be economic; and (3) are under the control of various governmental authorities. While these contentions may be true, public utilities already are compensated for this by: (1) Being allowed to operate as monopolies; (2) exercising, when needed, certain authorities, i.e., eminent domain, not available to others; and (3) being assured of a minimum return on their investment, a guarantee not generally available to other businesses. Further, a class exclusion or reduction, such as that suggested in the comments, would be unfair to other utilities, who by location, cannot use the public lands for rights-of-way.

After careful review of the reasoning presented in the comments it has been determined that it is reasonable that public utilities, as a class, pay for the use of the public lands and resources. The proposed and final rulemakings provide an opportunity for individual holders to have a specific case considered for a waiver or reduction of the rental.

Some of the comments on the proposed rulemaking objected to the Rural Electrification Act financed utilities, which Congress has exempted from the payment of rental, inclusion in a section giving the authorized officer discretion as to whether to charge or not charge rentals. These comments also suggested that the final rulemaking include all Rural Electrification Act financed facilities.

In response to these comments, the final rulemaking has adopted a change to clarify § 2803.1–2. The change divides the section into two parts and provides the following:

- Right-of-way grants excluded from the payment of rental (the exclusion from rental for Rural Electrification Act financed facilities covers both linear and site type facilities as intended by the provisions of Pub. L. 98–300 (See 132 *Cong. Rec.* S. 14980, October 3, 1986).
- Right-of-way grants where the authorized officer considers a waiver or reduction of rental on a case-by-case basis would be excluded if the rental is waived.

Application of Rental Schedule to Existing Grants

The proposed rulemaking provided that the rental schedule could be applied to:

- Existing right-of-way grants after notice to the holder,
- Right-of-way grants issued with an estimated rental pursuant to section 2803.1-2(b) of the existing regulations, and
- Right-of-way rental adjustment cases that had been appealed to the Office of Hearings and Appeals, Department of the Interior.

A few of the comments supported the provisions of the proposed rulemaking, with others being of the view that the rental schedule provided in the proposed rulemaking should be prospective only, but gave no alternative for use in the setting of the rental for right-of-way grants issued with an estimated rental or for rental cases that had been appealed. Some of the comments objected to applying the rental schedule retroactively to cases where the rental had been paid at the original rental rate or last uncontested rental adjustment, cating Bureau of Land Management Instruction Memorandum 84-190, Change 1, dated November 28, 1986, as the basis for the their view.

One of the comments on this issue categorized cases in the four following groupings:

- Grants issued or rental adjusted in States using the "going rate" method vs States not using the "going rate" method.
- Cases where the "going rate" method was used and the new rental appealed vs no cases involving no appeal.
- Existing rental cases where review of adjustment to rentals has not been made pending the promulgation of appropriate regulations.
- Grants issued with "subject to rental determination" vs those issued without such a provision.

This comment went on to suggest that the final rulemaking provide a differential between new right-of-way grants and situations where there has been a rental adjustment. The comment suggested that the rental schedule should be prospective for those cases involving a rental adjustment. As support for the suggestion, the comment suggested that the retroactive application to rental adjustment cases would require a great deal of administrative effort which would be more costly than what would be realized from the new rentals. The comment also made the point that the equities of this situation lie with those who appealed the use of the "going rate" method with the subsequent Department of the Interior policy decision to use a land value method in adjusting rentals.

Another comment suggested that the rental schedule contained in the proposed rulemaking be applied only to those right-of-way grants where the rental readjustment was based on the "going rate" method and those readjustment cases where under an agreement with Bureau of Land Management State officials, a protest of the rental adjustment was allowed in lieu of further appeal. This comment also suggested that the annual indexing provided by the proposed rulemaking be applicable to the rental for any previous year and where rental was paid without protest or appeal that such rental may not be recalculated, i.e., the rental schedule be applied to existing right-of-way grants only in those instances where the grant specifically provided for a future determination of the initial rental or where a rental adjustment was protested or appealed.

The decision of the Board of Land Appeals, Department of the Interior, that covers this issue is *Northwest Pipeline Corp.* (On reconsideration), 83 IBLA 204 (1984). That decision provided:

> Where the Bureau of Land Management proposed to resolve the conflict and inconsistencies in its appraisal method used to determine fair market rental values for natural gas pipeline rights-of-way, granted pursuant to the Act of February 25, 1920, *as amended*, 30 U.S.C. 185 (1982), the Board will not rule on the legality of the going rate method of appraisal, since the Bureau of Land Management should be allowed to explore the full range of options available in developing the proper appraisal method.
>
> During the interim period until the Bureau of Land Management develops an approved appraisal method to determine fair market value for natural gas pipeline rights-of-way, new rights-of-way should not be appraised using the going rate method of appraisal. The Bureau of Land Management should proceed to charge a reasonable estimate of the fair market value subject to subsequent appraisal in accordance with 43 CFR 2803.1-2(b).
>
> During the interim period until the Bureau of Land Management develops an approved appraisal method to determine fair market value for natural gas pipeline rights-of-way, reappraisal of existing rights-of-way should be deferred, and the Bureau of Land Management should continue to charge the original rental fee or last uncontested rental fee.
>
> The guidelines in this opinion should be applied during the interim period until an approved appraisal method is adopted. To the extent that the BLM has previously collected rental fees in these and other appealed cases based on the going rate method, or the Department has entered into arrangements for payment in accordance with IM 84-490, our decision does not require refund of those monies. Collected funds should be held in escrow by BLM pending the adoption and application of its appraisal methodology.

In early 1984, the Assistant Secretary—Lands and Minerals Management, in an effort to resolve the rental adjustment controversy, waived the then existing regulations to the extent necessary to allow an applicant to "escrow" the difference in disputed rental adjustments pending decision on those appeals. By Instruction Memorandum 84-490, dated May 12, 1984, the Bureau of Land Management instructed its field offices to include this "escrow" option where a rental redetermination was made involving ten or more right-of-way grants held by a single holder. Upon receipt of the Board of Land Appeals decision in *Northwest* (supra), the Bureau on November 24, 1984, changed Instruction Memorandum 84-490 through the issuance of Change 1 which provided:

> (1) Applicants for new rights-of-way should be charged the minimum rental of $25 for 5 years. The grant is to be made subject to a rental determination at a later date and the express covenant that any additional rental determined to be due as the result of the rental determination shall be paid upon request. (This was further clarified by instructions in Change 2 of Instruction Memorandum 84-490 dated March 15, 1985, ". . . item 1 means that a $25 for 5 years' rental estimate (or deposit) should be collected pending the completion of a rental determination. Once the new rental regulations have been implemented, it will be possible to do a rental determination using the new guidelines and request any additional money that may be due.")
>
> (2) Existing rights-of-way subject to readjustment will be continued at the original rental fee or last uncontested rental fee. Again, the rental payment is subject to review and revision after the new regulations are established.

When this final rulemaking becomes effective, it will be necessary for the Bureau of Land Management to examine each right-of-way grant that is subject to rental to determine whether the case would fall under the rental schedule or the rental determined differently and issue an appropriate rental decision.

After careful review of the proposed rulemaking and the reasoning raised in the comments on that rulemaking, it was determined that the equities of the issue of rental readjustments require the application of the provisions of the proposed and final rulemakings in the following situations:

(1) Prospectively to new right-of-way cases.

(2) Existing right-of-way cases where an estimated rental deposit was collected and the right-of-way provided for a subsequent rental determination (basically those issued since November, 1984).

(3) Existing right-of-way grant cases where the holder appealed a rental adjustment and the decision in Northwest (supra) applies. The Bureau of Land Management considers a case as having been appealed when an appellant right-of-way holder offered and the Bureau agreed to accept a protest to a rental adjustment in lieu of filing additional appeals to the Office of Hearings and Appeals, Department of the Interior.

(4) Where the rental schedule is used for cases falling under paragraphs (2) and (3) above, the annual rental adjustment shall be applied in determining prior year's rental.

The final rulemaking has adopted the concept of the proposed rulemaking on this point.

Competitive Bidding

Determining fair market value rental through a competitive bidding process is a method used not only in the proposed rulemaking by both private and governmental institutions. The Bureau of Land Management has and is currently using such a method for rights-of-way, principally for wind generation sites. The proposed and final rulemakings provide a procedure under which the authorized officer will, after considering the specific conditions for that case, make a determination on whether to use the competitive bidding procedure. The procedure provided in the proposed and final rulemakings would continue existing Bureau policy and be used only for site type right-of-way grants such as wind farms and communication sites.

While several of the comments supported this provision of the proposed rulemaking, a number of the comments objected to it because of their view that is could be applied to electrical transmission or similar linear facilities. The final rulemaking has adopted a clarifying change that limits its application to site grants.

Other comments objected to the proposed rulemaking because of their view that its provisions could be interpreted to require competitive bidding for all site facilities, including a communication site needed by a holder of a linear grant for the operation of that linear facility. It is extremely unlikely that an application for a site right-of-way grant for a facility related to a linear grant would be subject to a decision to use the competitive bidding system because the Bureau would normally give a preference to the holder of the linear right-of-way for the needed site. Therefore, the final rulemaking has adopted a change in this provision of the proposed rulemaking that clarifies the point that the holder of a linear right-of-way grant requiring a related right-of-way site will not be required to bid competitively for that site.

One of the comments suggested that final rulemaking should require the successful bidder for a competitively offered right-of-way to state under oath that the site will be used for the purpose set forth in the application. That comment went on to suggest that the final rulemaking should provide that the rental fee for the grant, if such fee is based on a percentage of production, would not be raised during the initial period of the grant. Existing regulations and Bureau of Land Management procedures are adequate to cover the first issue raised by this comment, while the second issue will be covered by the terms and conditions of the right-of-way grant. The final rulemaking has not adopted these suggestions.

The final rulemaking has adopted the provisions of the proposed rulemaking covering competitive bidding with only minor clarification changes.

Needed editorial, technical and grammatical changes have been made by the final rulemaking.

The principal author of this final rulemaking is Theodore Bingham, Division of Rights-Of-Way, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes made by this final rulemaking will not, when the rental payments for all rights-of-way grants and temporary use permits are considered, substantially increase the payments made by holders/permittees.

The changes made by the final rulemaking should make the rental procedures used by the Bureau of Land Management more efficient and equitable, while more accurately assessing receipt of fair market value. The changes made by this final rulemaking will be equally applicable to all entities that receive right-of-way grants or temporary use permits from the Bureau of Land Management for use of Federal lands for such right-of-way purposes.

There are no additional information collection requirements in this final rulemaking requiring approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects

43 CFR Part 2800

Administrative practice and procedure, Communications, Electric power, Highways and roads, Pipelines, Public lands—rights-of-way.

43 CFR Part 2880

Administrative practice and procedure, Common carriers, Oil and gas industry, Pipelines, Public lands—rights-of-way.

Under the authority of title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761–1771) and section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Parts 2800 and 2880, Group 2800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior.

May 1, 1987.

PART 2800—[AMENDED]

1. The authority citation for Part 2800 continues to read:

Authority: 43 U.S.C. 1761–1771.

2. Section 2803.1–2 is revised to read:

§ 2803.1–2 Rental.

(a) The holder of a right-of-way grant or temporary use permit shall pay annually, in advance, except as provided in paragraph (b) of this section, the fair market rental value as determined by the authorized officer applying sound business management principles and, so far as practicable and feasible, using comparable commercial practices. Annual rent billing periods shall be set or adjusted to coincide with the calendar year (January 1 through December 31) by proration on the basis of 12 months; the initial month shall not be counted for right-of-way grants or temporary use permits having an anniversary date of the 15th or later in the month and the terminal month shall not be counted if the termination date is the 14th or earlier in the month. Rental shall be determined in accordance with the provisions of paragraph (c) of this section; provided, however, that the minimum rental under paragaph (c)(1) shall not be less than the annual payment required by the schedule for 1 acre; provided, further, that in those instances where the annual payment is

$100 or less, the authorized officer may require an advance lump sum payment for 5 years.

(b)(1) No rental shall be collected where:

(i) The holder is a Federal, State or local government or agency or instrumentality thereof, except municipal utilities and cooperatives whose principal source of revenue is customer charges:

(ii) The right-of-way was issued pursuant to a statute that did not or does not require the payment of rental; or

(iii) The facilities constructed on a site or linear right-of-way are or were financed in whole or in part under the Rural Electrification Act of 1936, as amended, or are extensions from such Rural Electrification Act financed facilities.

(2) The authorized officer may reduce or waive the rental payment under the following instances:

(i) The holder is a nonprofit corporation or association which is not controlled by or is not a subsidiary of a profit making corporation or business enterprise;

(ii) The holder provides without charge, or at reduced rates, a valuable benefit to the public or to the programs of the Secretary;

(iii) The holder holds an outstanding permit, lease, license or contract for which the United States is already receiving compensation, except under an oil and gas lease where the lessee is required to secure a right-of-way grant or temporary use permit under part 2880 of this title; and:

(A) Needs a right-of-way grant or temporary use permit within the exterior boundaries of the permit, lease, license or contract area; or

(B) Needs a right-of-way across the public lands outside the permit, lease, license or contract area in order to reach said area;

(iv) With the concurrence of the State Director, the authorized officer, after consultation with an applicant/holder, determines that the requirement to pay the full rental will cause undue hardship on the holder/applicant and that it is in the public interest to reduce or waive said rental. In order to complete such consultation, the State Director may require the applicant/holder to submit data, information and other written material in support of a proposed finding that the right-of-way grant or temporary use permit qualifies for a reduction or waiver of rental; and

(v) A right-of-way involves a cost share road or reciprocal right-of-way agreement not subject to part 2812 of this title. Any fair market value rental required to be paid under this paragraph (b)(2)(v) shall be determined by the proportion of use.

(c)(1)(i) Except for those linear right-of-way grants or temporary use permits that the authorized officer determines under paragraph (c)(1)(v) of this section to require an individual appraisal, an applicant shall, prior to the issuance of a linear right-of-way grant or temporary use permit, submit an annual rental payment in advance for such right-of-way grant or temporary use permit in accordance with the following schedule:

PER ACRE RENTAL FEE ZONE VALUE

Zone value	Oil and gas and other energy related pipelines, roads, ditches and canals	Electric transmission lines, telephone electric distribution, non-energy related pipelines, and other linear rights-of-way
$50	$2.56	$2.24
100	5.13	4.49
200	10.26	8.97
300	15.38	13.46
400	20.51	17.95
500	25.64	22.44
600	30.77	26.92
1,000	51.28	44.87

(The values are based on zone value × impact adjustment × interest rate (6.41—1-year Treasury Securities "Constant Maturity" rate for June 30, 1986. The rate will remain constant except as provided in subparagraphs (ii) and (iii) of this section.)

A per acre rental schedule by State, County, and type of linear right-of-way use, which will be updated annually, is available from any Bureau State or District office or may be obtained by writing: Director (330), Bureau of Land Management, Room 3660, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

(ii) The schedule will be adjusted annually by multiplying the current year's rental per acre by the annual change, second quarter to the second quarter (June 30 to June 30), in the Gross National Product Implicit Price Deflator Index as published in the *Survey of Current Business* of the Department of Commerce, Bureau of Economic Analysis.

(iii) At such times as the cumulative change in the index used in paragraph (c)(1)(ii) of this section exceeds 30 percent or the change in the 3-year average of the 1-year interest rate exceeds plus or minus 50 percent, the zones and rental per acre figures shall be reviewed to determine whether market and business practices have differed sufficiently from the index to warrant a revision in the base zones and rental per acre figures. Measurements shall be taken at the end of the second quarter (June 30) of the year beginning with calendar year 1986. The initial bases (June 30, 1986) for these two indexes are: Gross National Product Price Implicit Price Deflator Index was 114.0 and the 3-year average of the 1-year Treasury interest rate was 8.86%.

(iv) Rental for the ensuing calendar year for any single right-of-way grant or temporary use permit shall be the rental per acre from the current schedule times the number of acres embraced in the grant or permit, rounded to the nearest whole dollar, unless such rental is reduced or waived as provided in paragraph (b)(2) of this section.

(v) The authorized officer shall use the fee schedule unless the authorized officer determines:

(A) A substantial segment or area within the right-of-way exceeds the zone(s) value by a factor of 10; and

(B) In the judgment of the authorized officer, the expected valuation is sufficient to warrant a separate appraisal.

Once the rental for a right-of-way grant has been determined by use of the rental schedule, the provisions of this subparagraph shall not be used as a basis for removing it from the schedule.

(2)(i) Existing linear right-of-way grants and temporary use permits may be made subject to the schedule provided by this paragraph upon reasonable notice to the holder. The notice shall provide the reasons for making the right-of-way subject to the schedule.

(ii) Where the new annual rental exceeds $100 and is more than a 100 percent increase over the current rental, the amount of increase in excess of the 100 percent increase shall be phased in by equal increments, plus the annual adjustment, over a 3-year period.

(3)(i) The rental for linear right-of-way grants and temporary use permits not covered by the schedule set out above in this paragraph, including those determined by the authorized officer to require an individual appraisal under paragraph (c)(1)(v) of this section. And for non-linear-right-of-way grants and temporary use permits (e.g., communications sites, reservoir sites, plant sites and storage sites) shall be determined by the authorized officer and paid annually in advance. Said rental shall be based on either a market survey of comparable rentals, or on a value determination for specific parcels or groups of parcels unless such rental is

reduced or waived as provided in paragraph (b) of this section. All such rental determinations shall be prepared to the standards and format described in the Uniform Appraisal Standards for Federal Land Acquisition (Department of Justice publication) and/or in certain cases as required by the Bureau's Appraisal manual (9300). Where the authorized officer determines that a competitive interest exists for site type right-of-way grants such as wind farms, communications sites, etc., rental may be determined through competitive bidding procedures set out in § 2803.1–3 of this title.

(ii) To expedite the processing of any grant or permit covered by paragraph (c)(3) of this section, the authorized officer may estimate rental and collect a deposit in advance with the agreement that upon completion of a rental value determination, the advance deposit shall be adjusted according to the final fair market rental value determination.

(4) Decisions on rental determinations are subject to appeal under subpart 2804 of this title.

(5) Upon the holder's written request, rentals may be prepaid for 5 years in advance.

(d) If the rental required by this section is not paid when due, and such default for nonpayment default continues for 30 days after notice, action may be taken to terminate the right-of-way grant or temporary use permit. After default has occurred, no structures, buildings or other equipment may be removed from the subservient lands except upon written permission from the authorized officer.

3. Sections 2803.1–3 and 2803.1–4 are redesignated §§ 2803.1–4 and 2803.1–5, respectively.

4. A new § 2803.1–3 is added to read:

§ 2803.1–3 Competitive bidding.

(a) The authorized officer may identify and offer public lands for competitive right-of-way use either on his/her own motion or as a result of nomination by the public. Competitive bidding shall be used only for site-type right-of-way grants such as wind farms and communication sites. The authorized officer shall give public notice of such decision through publication of a notice of realty action as provided in paragraph (c)(1) of this section. The decision to offer public lands for competitive right-of-way use shall conform to the requirements of the Bureau's land use planning process. The authorized officer shall not offer public lands for competitive right-of-way use where equities such as prior or related use of said lands warrant issuance of a noncompetitive right-of-way grant(s).

(b) A right-of-way grant issued pursuant to a competitive offer shall be awarded on the basis of the public benefit to be provided, the financial and technical capability of the bidder to undertake the project and the bid offer. Each bid shall be accompanied by the information required by the notice of realty action and a statement over the signature of the bidder or anyone authorized to sign for the bidder that he/she is in compliance with the requirements of the law and these regulations. A bid of less than the fair market rental value of the lands offered shall not be considered.

(c) The offering of public lands for right-of-way use under competitive bidding procedures shall be conducted in accordance with the following:

(1)(i) A notice of realty action indicating the availability of public lands for competitive right-of-way offering shall be published in the **Federal Register** and at least once a week for 3 consecutive weeks in a newspaper of general circulation in the area where the public lands are situated or in such other publication as the authorized officer may determine. The successful qualified bidder shall, prior to the issuance of the right-of-way grant, pay his/her proportionate share of the total cost of publication.

(ii) The notice of realty action shall include the use proposed for the public lands and the time, date and place of the offering, including a description of the lands being offered, terms and conditions of the grant(s), rates, bidding requirements, payment required, where bid forms may be obtained, the form in which the bids shall be submitted and any other information or requirements determined appropriate by the authorized officer.

(2) Bids may be made either by a principal or duly qualified agent.

(3) All sealed bids shall be opened at the time and date specified in the notice of realty action, but no bids shall be accepted or rejected at that time. The right to reject any and all bids is reserved. Only those bids received by the close of business on the day prior to the bid opening or at such other time stated in the notice of realty action and made for at least the minimum acceptable bid shall be considered. Each bid shall be accompanied by U.S. currency or certified check, postal money order, bank draft or cashier's check payable in U.S. currency and made payable to the Department of the Interior—Bureau of Land Management for not less than one-fifth of the amount of the bid, and shall be enclosed in a sealed envelope which shall be marked as prescribed in the notice of realty action. If 2 or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing unless another method is specified in the notice of realty action. The drawing shall be held by the authorized officer immediately following the opening of the sealed bids.

(4) In the event the authorized officer rejects the highest qualified bid or releases the bidder from such bid, the authorized officer shall determine whether the public lands involved in the offering shall be offered to the next highest bidder, withdrawn from the market or reoffered.

(5) If the highest qualified bid is accepted by the authorized officer, the grant form(s) shall be forwarded to the qualifying bidder for signing. The signed grant form(s) with the payment of the balance of the first year's rental and the publication costs shall be returned within 30 days of its receipt by the highest qualified bidder and shall qualify as acceptance of the right-of-way grant(s).

(6) If the successful qualified bidder fails to execute the grant form(s) and pay the balance of the rental payment and the costs of publication within the allowed time, or otherwise fails to comply with the regulations of this subpart, the one-fifth remittance accompanying the bid shall be forfeited

§ 2803.6–3 [Amended]

5. Section 2803.6–3 is amended by removing from where it appears in the next to last sentence the phrase "plus any additional terms and conditions and any special stipulations that the authorized officer may impose" and adding at the end of the section a new sentence "The authorized officer may, at the time of approval of the assignment, modify or add bonding requirements."

6. Section 2803.6–4 is revised to read:

§ 2803.6–4 Reimbursement of costs for assignments.

(a) All filings for assignments, except as provided in paragraph (b) of this section, made pursuant to this section shall be accompanied by a non-refundable payment of $50 from the assignor. Exceptions for a nonrefundable payment for an assignment are the same as in § 2803.1 of this title.

(b) Where a holder assigns more than 1 right-of-way grant as a single action, the authorized officer may, due to economies of scale, set a nonrefundable fee of less than $50 per assignment.

PART 2880—[AMENDED]

7. The authority citation for Part 2880 continues to read:

Authority: 30 U.S.C. 185, unless otherwise noted.

§ 2881.1-1 [Amended]

8. Section 2881.1-1(g) is amended by removing the period at the end of the last sentence thereof and adding the phrase ", except that where a holder assigns more than 1 right-of-way grant as part of a single action, the authorized officer, due to economies of scale, may set a fee of less than $50 per assignment."

§ 2881.2 [Amended]

9. Section 2881.2 is amended by removing paragraph (a)(2) in its entirety and redesignating the existing paragraphs (a) (3), (4), and (5) as paragraphs (a) (2), (3), and (4), respectively.

§ 2883.1-2 [Amended]

10. Section 2883.1-2 is amended by removing from where it appears the citation "§ 2803.1-2(c)" and replacing it with the citation "§ 2803.1-2(b)".

Linear Rights-of-Way Rental Schedule

Note.—The following schedule is printed for information and will not appear in Title 43 of the Code of Federal Regulations.

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of-way
Alabama: All counties	$20.51	$17.95
Arizona:		
Apache	5.13	4.49
Coconino, north of the Colorado River		
Cochise		
Gila		
Graham		
La Paz		
Mohave		
Navajo		
Pima		
Yavapai		
Yuma		
Coconino, south of the Colorado River	20.51	17.95
Greenlee		
Maricopa		
Pinal		
Santa Cruz		
Arkansas: All counties	15.38	13.46
California:		
Imperial	10.26	8.97
Inyo		
Lassen		
Modoc		
Riverside		
San Bernardino		
Siskiyou	15.38	13.46
Alameda	25.64	22.44
Alpine		
Amador		
Butte		
Calaveras		
Colusa		
Contra Costa		
Del Norte		
El Dorado		
Fresno		
Glenn		
Humbolt		
Kern		
Kings		
Lake		
Madera		
Mariposa		
Mendiocino		
Merced		
Mono		
Napa		
Nevada		
Placer		
Plumas		
Sacramento		
San Benito		
San Joaquin		
Santa Clara		
Shasta		
Sierra		
Solano		
Sonoma		
Stanislaus		
Sutter		
Tehama		
Toulumne		
Trinty		
Tulare		
Yolo		
Yuba		
Los Angeles	30.77	26.92
Marin		
Monterey		
Orange		
San Diego		
San Francisco		
San Luis Obispo		
San Mateo		
Santa Barbara		
Santa Cruz		
Ventura		
Colorado:		
Adams	5.13	4.49
Arapahoe		
Bent		
Cheyenne		
Crowley		
Elbert		
El Paso		
Huerfano		
Kiowa		
Kit Carson		
Lincoln		
Logan		
Moffat		
Montezuma		
Morgan		
Pueblo		
Phillips		
Sedgewick		
Washington		
Weld		
Yuma		
Baca	10.26	8.97
Dolores		
Garfield		
Las Animas		
Mesa		
Montrose		
Otero		
Prowers		
Rio Blanco		
Routt		
San Miguel		
Alamosa	20.15	17.95
Archuleta		
Boulder		
Chaffee		
Clear Creek		
Conejos		
Costilla		
Custer		
Delta		
Denver		
Douglas		
Eagle		
Fremont		
Gilpin		
Grand		
Gunnison		
Hinsdale		
Jackson		
Jefferson		
Lake		
La Plata		
Larimer		
Mineral		
Ouray		
Park		
Pitkin		
Rio Grande		
Saguache		
San Juan		
Summit		
Teller		
Connecticut: All counties	5.13	4.49
Delaware: All counties	5.13	4.49
Florida:		
Baker	30.77	26.92
Bay		
Bradford		
Calhoun		
Clay		
Columbia		
Dixie		
Duval		
Escambia		
Franklin		
Gadsden		
Gilchrist		
Gulf		
Hamilton		
Holmes		
Jackson		
Jefferson		
Lafayette		
Leon		
Liberty		
Madison		
Nassau		
Okaloosa		
Santa Rosa		
Suwannee		
Taylor		
Union		
Wakulla		
Walton		
Washington		
All other counties	51.28	44.87
Georgia: All counties	30.77	26.92
Idaho:		
Cassia	5.13	4.49
Gooding		
Jerome		
Lincoln		
Minidoka		
Oneida		
Owyhee		
Power		
Twin Falls		
Ada	15.38	13.46
Adams		
Bannock		
Bear Lake		
Benewah		
Bingham		
Blaine		
Boise		
Bonner		
Bonneville		
Boundary		
Butte		
Camas		

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of-way
Canyon		
Caribou		
Clark		
Clearwater		
Custer		
Elmore		
Franklin		
Fremont		
Gem		
Idaho		
Jefferson		
Kootenai		
Latah		
Lemhi		
Lewis		
Madison		
Nez Perce		
Payette		
Shoshone		
Teton		
Valley		
Washington		
Illinois: All counties	15.38	13.46
Indiana: All counties	25.64	22.44
Iowa: All counties	15.38	13.46
Kansas:		
Morton	10.26	8.97
All other counties	5.13	4.49
Kentucky: All counties	15.38	13.46
Louisiana: All counties	30.77	26.92
Maine: All counties	15.38	13.46
Maryland: All counties	5.13	4.49
Massachusetts: All counties	5.13	4.49
Michigan:		
Alger	15.38	13.46
Baraga		
Chippewa		
Delta		
Dickinson		
Gogebic		
Houghton		
Iron		
Keweenaw		
Luce		
Mackinac		
Marquette		
Menominee		
Ontonagon		
Schoolcraft		
All other counties	20.51	17.95
Minnesota: All counties	15.38	13.46
Mississippi: All counties	20.51	17.95
Missouri: All counties	15.38	13.46
Montana:		
Big Horn	5.13	4.49
Blaine		
Carter		
Cascade		
Chouteau		
Custer		
Daniels		
Dawson		
Fallon		
Fergus		
Garfield		
Glacier		
Golden Valley		
Hill		
Judith Basin		
Liberty		
McCone		
Meagher		
Musselshell		
Petroleum		
Phillips		
Pondera		
Powder River		
Prairie		
Richland		
Roosevelt		
Rosebud		
Sheridan		
Teton		
Toole		
Treasure		
Valley		
Wheatland		
Wibaux		
Yellowstone		
Beaverland	15.38	13.46
Broadwater		
Carbon		
Deer Lodge		
Flathead		
Gallatin		
Granite		
Jefferson		
Lake		
Lewis and Clark		
Lincoln		
Madison		
Mineral		
Missoula		
Park		
Powell		
Ravalli		
Sanders		
Silver Bow		
Stillwater		
Sweet Grass		
Nebraska: All counties	5.13	4.49
Nevada:		
Churchill	2.56	2.24
Clark		
Elko		
Esmeralda		
Eureka		
Humboldt		
Lander		
Lincoln		
Lyon		
Mineral		
Nye		
Pershing		
Washoe		
White Pine		
Carson City	25.64	22.44
Douglas		
Story		
New Hampshire: All counties	15.38	13.46
New Jersey: All counties	5.13	4.49
New Mexico:		
Chaves	5.13	4.49
Curry		
De Baca		
Dona Ana		
Eddy		
Grant		
Guadalupe		
Harding		
Hidalgo		
Lea		
Luna		
McKinley		
Otero		
Quay		
Rossevelt		
San Juan		
Socorro		
Torrence		
Rio Arriba	10.26	8.97
Sandoval		
Union		
Bernalillo	20.51	17.95
Catron		
Cibola		
Colfax		
Lincoln		
Los Alamos		
Mora		
San Miguel		
Santa Fe		
Sierra		
Taos		
Valencia		
New York: All counties	20.51	17.95
North Carolina: All counties	30.77	26.92
North Dakota: All counties	5.13	4.49
Ohio: All counties	20.51	17.95
Oklahoma:		
Beaver	10.26	8.97
Cimmaron		
Roger Mills		
Texas		
Le Flore	15.38	13.46
McCurtain		
All other counties	5.13	4.49
Oregon:		
Harney	5.13	4.49
Lake		
Malheur		
Baker	10.26	8.97
Crook		
Deschutes		
Gilliam		
Grant		
Jefferson		
Klamath		
Morrow		
Sherman		
Umatilla		
Union		
Wallowa		
Wasco		
Wheeler		
Coos	15.38	13.46
Curry		
Douglas		
Jackson		
Josephine		
Benton	20.51	17.95
Clackamas		
Clatsop		
Columbia		
Hood River		
Lane		
Lincoln		
Linn		
Marion		
Multnomah		
Polk		
Tillamook		
Washington		
Yamhill		
Pennsylvania: All counties	20.51	17.95
Puerto Rico: All	30.77	26.92
Rhode Island: All counties	5.13	4.49
South Carolina: All counties	30.77	26.92
South Dakota:		
Butte	15.38	13.46
Custer		
Fall River		
Lawrence		
Meade		
Pennington		
All other counties	5.13	4.49
Tennessee: All counties	20.51	17.95
Texas:		
Culberson	5.13	4.49
El Paso		
Hudspeth		
All other counties	30.77	26.92
Utah:		
Beaver	5.13	4.49
Box Elder		
Carbon		
Duchesne		
Emery		
Garfield		
Grand		
Iron		
Jaub		
Kane		
Millard		
San Juan		
Tooele		
Unitah		
Wayne		
Washington	10.16	8.97
Cache	15.38	13.46
Daggett		
Davis		
Morgan		
Piute		

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of-way
Rich		
Salt Lake		
Sanpete		
Sevier		
Summit		
Utah		
Wasatch		
Weber		
Vermont: All counties	20.51	17.95
Virginia: All counties	20.51	17.95
Washington:		
Adams	10.26	8.97
Asotin		
Benton		
Chelan		
Columbia		
Douglas		
Franklin		
Garfield		
Grant		
Kittitas		
Klickitat		
Lincoln		
Okanagan		
Spokane		
Walla Walla		
Whitman		

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of-way
Yakima		
Ferry	15.38	13.46
Pend Oreille		
Stevens		
Clallam	20.51	17.95
Clark		
Cowlitz		
Grays Harbor		
Island		
Jefferson		
King		
Kitsap		
Lewis		
Mason		
Pacific		
Pierce		
San Juan		
Skagit		
Skamania		
Snohomish		
Thurston		
Wahkiakum		
Whatcom		
West Virginia: All counties	20.51	17.95
Wisconsin: All counties	15.38	13.46
Wyoming:		
Albany	5.13	4.49

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of-way
Big Horn		
Campbell		
Carbon		
Converse		
Fremont		
Goshen		
Johnson		
Laramie		
Lincoln		
Natrona		
Niobrara		
Platte		
Sheridan		
Sublette		
Sweetwater		
Uinta		
Washakie		
Crook	15.38	13.46
Hot Springs		
Park		
Weston		
Teton		

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Wednesday
July 8, 1987

Part VIII

Department of Education

Office of Special Education and Rehabilitative Services

Educational Media Research, Production, Distribution, and Training and Technology, Educational Media, and Materials; Final Annual Funding Priorities

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Educational Media Research, Production, Distribution, and Training and Technology, Educational Media, and Materials; Final Annual Funding Priorities

AGENCY: Department of Education.

ACTION: Notice of final annual funding priorities.

SUMMARY: The Secretary announces annual funding priorities for the Educational Media Research, Production, Distribution, and Training program and the Technology, Educational Media, and Materials program to ensure effective use of program funds and to direct funds to areas of identified need during fiscal year 1987.

EFFECTIVE DATE: These final annual funding priorities take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these final annual funding priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: The person listed in each individual priority.

SUPPLEMENTARY INFORMATION: Awards under the Educational Media Research, Production, Distribution, and Training program are authorized under Part F of the Education of the Handicapped Act. The purpose of this program is to promote the educational advancement of handicapped persons by providing assistance for research on the use of educational media for handicapped persons; producing and distributing educational media for handicapped persons, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of handicapped persons; and training persons in the use of educational media for the instruction of handicapped persons. Awards under the Technology, Educational Media, and Materials program are authorized under Part G of the Education of the Handicapped Act which was established by section 317 of the Education of the Handicapped Act Amendments of 1986. The purpose of this program is to advance the use of new technology, media, and materials in the education of the handicapped.

Summary of Comments and Responses

A notice of proposed annual funding priorities was published in the **Federal Register** on April 7, 1987 at 52 FR 11158. The public was given thirty days to comment on the proposed priorities. One comment was received in response to the notice of proposed annual funding priorities. The comment and the Department's response are summarized below:

Comment: One commenter complimented the Secretary on the choice of the six priorities and the use of the selection criteria at 34 CFR 332.32. However, the commenter was concerned that non-research educational media program activities, which the commenter believes are authorized under new Part G of the Act, were not listed in the proposed priorities and requested that they be included as a priority. The commenter's specific interest appears to be in the field of acquiring, producing, and distributing films and related media.

Response: No change has been made. Although various types of activities, including the general category of educational media activities, may be supported under both Part F and new Part G of the Act, the Secretary may annually select a priority or priorities for funding by publishing a notice in the **Federal Register.** Due to the limited amount of funds available in any given fiscal year for new awards, it is not possible to invite applications for projects in all potential areas of activity. However, the Department will consider including more educational media activities in subsequent fiscal years' priority announcements.

Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary gives an absolute preference under the Educational Media Research, Production, Distribution, and Training program in fiscal year 1987 to applications that respond to priorities 1, 2, and 3, described below. The Secretary also gives an absolute preference under the new Technology, Educational Media, and Materials program in fiscal year 1987 to applications that respond to priorities 4, 5, and 6 described below. An absolute preference is one under which the Secretary selects only those applications that meet the described priorities. In addition, for fiscal year 1987 the Secretary will use the selection criteria for the Educational Media Research, Production, Distribution, and Training program at 34 CFR 332.32 to evaluate applications submitted under the Technology, Educational Media, and Materials program which will be funded under new Part G of the Act.

Priority 1—Closed-Captioned Real-Time News

This priority supports one cooperative agreement for closed-captioned national real-time news and public information programming. This will provide hearing impaired Americans with national up-to-date evening news, morning news, and weekend news as well as access to current events and other public information that affects the lives of all citizens. This priority is covered under section 651(a)(2) of the Act (Part F).

FOR FURTHER INFORMATION CONTACT: Dr. Malcolm J. Norwood, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094–M/S 2313), Washington, DC 20202. Telephone: (202) 732–1177.

Priority 2—Closed-Captioned National Television Programming

This priority supports a cooperative agreement to close-caption syndicated programs. Closed-captioning of syndicated programs increases access to programming available to the general population. This priority is covered under section 651(a)(2) of the Act (Part F).

FOR FURTHER INFORMATION CONTACT: Dr. Malcolm J. Norwood, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094–M/S 2313), Washington, DC 20202. Telephone: (202) 732–1177.

Priority 3—Closed-Captioned Local News Projects

This priority supports new projects for the closed-captioning of local news programs. Projects will be incrementally funded over a 3-year period to encourage closed-captioning of local news. At the end of the third year, the applicants are expected to continue the project without additional Federal support. This priority is covered under section 651(a)(2) of the Act (Part F).

FOR FURTHER INFORMATION CONTACT: Dr. Malcolm J. Norwood, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094–M/S 2313), Washington, DC 20202. Telephone: (202) 732–1177.

Priority 4—Compensatory Technology Applications

This priority supports innovative adaptations of hardware and software technology and the field-test evaluation of those innovative adaptations. The technology adaptations must compensate for physical, sensory, or cognitive learning impediments in order to: (a) Alleviate the need to modify instructional materials and/or (b) increase the overall accessability to educational opportunities for handicapped learners. These projects must capitalize on advances in such areas as peripherals, memory, display, networking, and reproduction. Projects must develop prototypes which serve as models of transfer applications of existing technology for use in the education of handicapped children. Following the development phase, appropriate evaluation and field-testing of the adapted technology device must occur. In addition, a plan for national marketing and distribution including a rationale supporting the modifications based on the field-test results must be submitted as a final report. This priority is covered under section 661 of the Act (Part G).

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732-1099.

Priority 5—Improving Technology Software

This priority supports the investigation, synthesis, and transfer of research information related to designing, creating, and field-testing an advanced computer assisted instruction (CAI) program that demonstrates superior computerization of teaching/learning processes. This may include the collection of data for use in the design and development phase. The resulting product from each project must be a CAI personal computer program designed for use in the education of handicapped children. The CAI program must be on a specific topic in one of these basic subjects: language arts, mathematics, or science. The CAI program must involve the handicapped student in an interactive, individualized way by including instructional options such as: student control of the entry point in lessons; student response to questions asked; branching of instruction or direction based on performance analysis as presented on the computer screen; and/or student manipulation via response devices other than the keyboard (e.g., graphics entry pad, light pen, touch screen, mouse, voice, or other non-keyboard input devices). Computer simulations of science experiments, and situations involving math and language arts skills are encouraged. This advanced programming must result in state-of-the-art software and demonstrate the benefits of student involvement and student control in CAI. This priority is covered under section 661 of the Act (Part G).

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732-1099.

Priority 6—Instructional Technology Research

This priority supports studies of the various secondary impacts of using technology in the education of handicapped children to enhance the effective use of technology in special education. For example, even with the growing number of microcomputers available in schools today, this media technology is not being used to its fullest potential as an integral part of instruction. Research must be conducted on: (1) The effects of computer-developed versus noncomputer-developed individualized education programs (IEPs) on the administrators, teachers, and parents involved in developing and implementing IEP's; (2) the effects of cultural differences related to the use and outcomes of technology-based instruction; (3) the social impact on children from using technology as part of their instruction; (4) the organizational impact and change associated with the implementation of technology; or (5) the effects of computer-managed versus noncomputer-managed instruction. The results of this research are to be reported in a series of research monographs. This priority is covered under section 661 of the Act (Part G).

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732-1099.

(20 U.S.C. 1451(a)(2), 1452(b)(5), and Section 317 of the Education of the Handicapped Act Amendments of 1986 (Part G, Section 661))

(Catalog of Federal Domestic Assistance No. 84.026; Educational Media Research, Production, Distribution, and Training)

Dated: June 17, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-15518 Filed 7-7-87; 8:45 am]

BILLING CODE 4000-01-M

Federal Register

Wednesday
July 8, 1987

Part IX

Department of Education

34 CFR Part 319

Grants to State Educational Agencies and Institutions of Higher Education; Final Regulations and Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 319

Training Personnel for the Education of the Handicapped—Grants to State Educational Agencies and Institutions of Higher Education

AGENCY: Department of Education.

ACTION: Final regulations with invitation to comment.

SUMMARY: The Secretary amends the regulations governing the Training of Personnel for the Education of the Handicapped program under Part D of the Education of the Handicapped Act (EHA) and invites further comments on the regulations. These regulations are needed to implement new requirements under section 632 of the EHA, as amended in 1986. Section 632 authorizes grants to State educational agencies (SEAs) and institutions of higher education (IHEs). The intended effect of these regulations is to clarify the statutory requirements and to improve the operation of the program.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Norman Howe, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4625—M/S 2313), Washington, DC, 20202. Telephone: (202) 732-1068.

SUPPLEMENTARY INFORMATION: The Training Personnel for the Education of the Handicapped Program is authorized by sections 631 and 632 of the EHA. Section 631 creates three specific subprograms, providing for grants to (1) nonprofit organizations for parent training and information, (2) IHEs and nonprofit organizations for training personnel for careers in special education, and (3) IHEs and nonprofit organizations for special projects. Section 632 provides for grants to SEAs and IHEs for preservice and inservice personnel training.

In the past, the regulations implementing all four subprograms were included under 34 CFR Part 318, and the same selection criteria were used in reviewing all applications submitted under that part. However, in order to clarify the separate requirements for the subprograms, and to provide separate selection criteria, 34 CFR Part 318 will be divided into three separate parts. The proposed regulations for the three subprograms authorized by section 631 will be published later because those regulations will not affect awards made in fiscal year 1987.

The new Part 319 contains the regulations for the Grants to State Educational Agencies and Institutions of Higher Education program, authorized by section 632. Two separate components are addressed in the regulations: mandatory State grants and competitive grants.

Under the State grant program, each SEA that submits an eligible application that proposes preservice or inservice training activities designed to meet the personnel needs identified in the State's comprehensive system of personnel development will receive a State grant.

The amount each SEA receives is based on its score on criteria established in the regulations. In fiscal year 1987, an SEA that is eligible to receive a noncompeting continuation grant under a previously funded multi-year project may receive that grant at the previously budgeted amount. If the SEA receives a continuation grant, it may not also receive a new State grant.

Under the competitive grant program, SEAs and IHEs may compete for additional funds according to designated annual priorities. The Secretary selects applications for funding within these priorities based on the selection criteria established in these regulations.

The final priority for fiscal year 1987, also published in this issue of the **Federal Register**, supports projects that demonstrate cooperation between SEAs and IHEs to provide preservice training of personnel for careers in special education of children and youth, or supervisors of those personnel.

On May 27, 1987, the Secretary published a notice of proposed rulemaking for the Training Personnel for the Education of the Handicapped—Grants to State Educational Agencies and Higher Education Programs in the **Federal Register** (52 FR 19804). No significant changes have been made to the regulations. The comments received in response to that notice and the Department's responses are summarized below:

Comment: Some commenters requested that the amount of time allowed for comment on the proposed regulations be extended.

Response: The regulations are published today as final with an invitation for further comment. These regulations must be published in final for 1987 in order to make awards to SEAs that are required by section 632, and to fund the SEA/IHE cooperative competition.

Comment: One commenter recommended that § 319.21(b) be changed by inserting ". . . . infants, toddlers," immediately prior to the terms "children and youth". This commenter also recommended that in Subpart D the word "student" be changed to "trainee".

Response: A change has been made. Although the term "children" includes "infants" and "toddlers" we have amended the regulations for the sake of consistency to refer to "infants, toddlers, children, and youth". No change is made in Subpart D to the term "trainee" as it is used interchangeably throughout the Part with the term "student".

Comment: One commenter recommended a change in §§ 319.21(b)(2)(iii) and 319.21(b)(4)(ii) to insert the term "prepared" immediately before the terms "graduated", "employed", and "hired". In the same sections, this commenter would change "or employed" and "or hired" to "and employed" and "and hired". These recommendations are made to clarify that both preservice and inservice projects are encompassed and that benefits will be described and data collected on trainees who complete the training program and who have been employed or hired.

Response: A change has been made. Sections 319.21(b)(2)(iii) and 319.21(b)(4)(ii) are changed to read " . . . graduated or otherwise having completed the training program and . . . ".

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking the Secretary requested comments on whether the regulations in the document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States. Based on the responses to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Invitation to Comment

The Secretary is issuing these regulations in final form, following an opportunity for public comment in response to the notice of proposed rulemaking. The time available for comment has been limited by the need to implement these regulations before the end of fiscal year 1987. Recognizing the possibility that some interested organizations and individuals may wish to provide additional comments on these regulations, the Secretary invites further comments on these regulations and will carefully consider making appropriate amendments to these regulations for future years based on any further comments received.

All comments submitted in response to these regulations will be available for public inspection during and after the comment period in Room 4625, Switzer Building, 330 C Street, SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce the regulatory burdens found in these regulations.

List of Subjects in 34 CFR Part 319

Colleges and universities, Education, Education of handicapped, Education-training, Grant programs-education, Reporting and recordkeeping requirements, State educational agencies, Teachers.

(Catalog of Federal Domestic Assistance No. 34.029; Training Personnel for the Education of the Handicapped)

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 319 to read as follows:

PART 319—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED—GRANTS TO STATE EDUCATIONAL AGENCIES AND INSTITUTIONS OF HIGHER EDUCATION

Subpart A—General

Sec.

Subpart B—How Does One Apply for an Award?

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must be Met After an Award?

Authority: 20 U.S.C. 1432 and 1434, unless otherwise noted.

Subpart A—General

§ 319.1 What is the purpose of this part?

(a) *General.* The Secretary funds a State grant program and a competitive grant program under this part to assist in establishing and maintaining preservice and inservice training programs that prepare personnel to meet the needs of infants, toddlers, children, and youth with handicaps.

(b) *State grant program.* Under the State grant program, the Secretary makes a grant to each State educational agency.

(c) *Competitive grant program.* Under the competitive grant program, the Secretary may make grants to State educational agencies (in addition to the grants awarded under the State grant program) or institutions of higher education.

(Authority: 20 U.S.C. 1432)

§ 319.2 Who is eligible for an award?

(a) State educational agencies are eligible for awards under both the State grant and the competitive grant programs in § 319.1.

(b) Institutions of higher education are eligible for awards under the competitive grant program in § 319.1(c).

(Authority: 20 U.S.C. 1432)

§ 319.3 What activities may the Secretary fund?

(a) The Secretary supports preservice and inservice training programs that prepare professionals and paraprofessionals, or their supervisors to serve infants, toddlers, children, or youth with handicaps.

(b) Any activities assisted under this part must be consistent with the personnel needs identified in the State's comprehensive system of personnel development.

(Authority: 20 U.S.C. 1432)

§ 319.4 What regulations apply to this program?

The following regulations apply to assistance under this program.

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(b) The regulations in this Part 319.

(Authority: 20 U.S.C. 1432)

§ 319.5 What definitions apply to this program?

The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal Year
Grant period
Preschool
Project
Public
Secretary
State
State educational agency

(Authority: 20 U.S.C. 1432)

§§ 319.6–319.9 [Reserved]

Subpart B—How Does One Apply for an Award?

§ 319.10 What must an institution of higher education that proposes to provide preservice training demonstrate in its application?

An institution of higher education that proposes to provide preservice training must demonstrate that it meets State and professionally recognized standards for the training of special education and related services personnel, as evidenced by appropriate State and professional accreditation, unless—as indicated in a published priority of the Secretary—the

grant is for the purpose of assisting the applicant to meet those standards.

(Authority: 20 U.S.C. 1432)

§§ 319.11-319.19 [Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 319.20 How does the Secretary determine the amount of a state grant?

(a) The Secretary determines the amount of a grant under § 319.1(a) based upon the applicant's need for assistance under this part and quality of its application.

(b) The Secretary assesses the applicant's need for assistance and the quality of its application based on the criteria set forth in § 319.21(b), except for § 319.21(b)(2)(viii).

(c) In determining the quality of the plan of operation under § 319.21(b)(3), the Secretary considers the extent of participatory planning among agencies and institutions involved in activities of the State's comprehensive system of personnel development.

(Authority: 20 U.S.C. 1432)
(Approved under OMB control number 1820-0028)

§ 319.21 What selection criteria does the Secretary use in the competitive grant program?

(a) The Secretary uses the criteria in paragraph (b) of this section to evaluate an application for a competitive grant.

(b)(1) *Extent of need for the project.* (30 points) The Secretary reviews each application to determine—

(i) The overall needs addressed by the project;

(ii) The extent to which the project addresses the personnel needs identified in the State's comprehensive system of personnel development; and

(iii) How the project relates to actual and projected personnel needs for certified teachers in the State as identified by the State educational agency in its annual data report required under section 618 of the Education of the Handicapped Act.

(2) *Program content.* (20 points) The Secretary reviews each application to determine the extent to which—

(i) Competencies that each trainee will acquire and how the competencies will be evaluated are identified;

(ii) Substantive content of the project is appropriate for the attainment of professional knowledge and competencies that are necessary for the provision of quality educational services to infants, oddlers, children, and youth with handicaps;

(iii) Benefits to be gained by the number of trainees expected to be graduated or otherwise having completed the training program and employed over the next five years are described;

(iv) Appropriate methods, procedures, techniques, and instructional media or materials are used in the preparation of personnel who serve infants, toddlers, children, and youth with handicaps;

(v) If relevent, appropriate practicum facilities are accessible to the applicant and students, and are used for such activities as observation, participation, practice teaching, laboratory or clinical experience, internships, and other supervised experiences of adequate scope, and length;

(vi) If relevant, practicum facilities for model programs provide state-of-the-art educational services, including use of current and innovative curriculum materials, instructional procedures, and equipment;

(vii) Program philosophy, program objectives, and activities implemented to attain program objectives are related to the educational needs of infants, toddlers, children, and youth with handicaps; and

(viii) This project will complement and build upon grants under the State grant program.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) How the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate for the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable including, but not limited to the number of trainees graduated or otherwise having completed the training program and hired. (*See* 34 CFR 75.590, Evaluation by the grantee).

(5) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(5)(i) and (ii) of this section plans to commit to the project;

(iv) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition; and

(v) Evidence of the trainer's past experience and training in fields related to the objectives of the project.

(6) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(7) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1432)

(Approved under OMB control number 1820-0028)

§§ 319.22-319.29 [Reserved]

Subpart D—What Conditions Must be Met After an Award?

§ 319.30 Is student financial assistance authorized?

A grantee may use grant funds to provide traineeships or stipends.

(Authority: 20 U.S.C. 1432)

§ 319.31 What are the student financial assistance criteria?

Direct financial assistance may be paid to students only in preservice programs if—

(a) The student is qualified for admission to the program of study.

(b) The student maintains satisfactory progress in a course of study, as defined in 34 CFR 668.16(e);

(c) The student demonstrates need for financial assistance as determined by criteria established by the grantee; and

(d) The student—

(1) Is a U.S. citizen or National;

(2) Is a permanent resident of the Republic of the Marshall Islands, Federated States of Micronesia,

Republic of Palau, or the Commonwealth of the Northern Mariana Islands; or

(3) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a lawful permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident.

(Authority: 20 U.S.C. 1432)

§ 319.32 What amount of assistance is authorized?

Subject to the limitations in §§ 319.33, a grantee shall disburse financial assistance to students in amounts consistent with established policies of the grantee that are relevant to providing financial assistance to part-time and full-time students, including policy relevant to the use of financial assistance for dependents.

§ 319.33 What financial assistance is authorized for part-time students?

(a) Students enrolled for less than a full-time academic year may receive a traineeship or a stipend.

(b) Part-time students who are receiving financial assistance from other public or private agencies or institutions for training are not eligible for financial assistance under this section.

(Authority: 20 U.S.C. 1432)

§ 319.34 May the grantee use funds if a financially assisted student withdraws or is dismissed?

Financial assistance awarded to a student that is unexpended because the student withdraws or is dismissed from the training program may be used for other project costs, including awards to other students, during the grant period.

(Authority: 20 U.S.C. 1432)

§ 319.35 What types of reports are required?

Not more than sixty days after the end of any fiscal year, each recipient of a grant during such fiscal year shall prepare and submit a report to the Secretary. Each report shall be in such form and detail as the Secretary determines to be appropriate, and shall include—

(a) The number of individuals trained under the grant by category of training and level of training; and

(b) The number of individuals trained under the grant receiving degrees and certification, by category and level of training.

(Authority: 20 U.S.C. 1434)

(Approved under OMB control number 1820-0530)

§§ 319.36-319.39 [Reserved]

[FR Doc. 87-15520 Filed 7-7-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

State Educational Agency and Institutions of Higher Education; Annual Funding Priority

AGENCY: Department of Education.

ACTION: Notice of final annual funding priority.

SUMMARY: The Secretary announces an annual funding priority under the Grants to State Educational Agencies (SEAs) and Institutions of Higher Education (IHEs) program. This priority supports awards for preservice training on a cooperative basis between SEAs and IHEs to prepare personnel to serve infants, toddlers, children, and youth with handicaps.

EFFECTIVE DATE: This final funding priority will take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this final priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Richard Champion, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4625—M/S 2313,) Washington, DC 20202. Telephone: (202) 732–1158.

SUPPLEMENTARY INFORMATION: The Training Personnel for the Education of the Handicapped program is authorized by sections 631 and 632 of Part D of the Education of the Handicapped Act (EHA). This program is designed to increase the quantity and improve the quality of personnel available to educate children and youth with handicaps. Section 632 of the EHA provides Federal financial assistance for projects to train personnel to meet the needs of infants, toddlers, children and youth with handicaps, consistent with the pesonnel needs identified in each State's comprehensive system of personnel development.

A notice of proposed annual funding priority was published in the **Federal Register** on May 27, 1987 at 52 FR 19812. The public was given thirty days to comment on the proposed priority. Comments received in response to that notice and the Department's responses are summarized below. In response to the comments received regarding the proposed priority, the final priority has been revised to allow submission of applications by either SEAs or IHEs with the written acknowledgement of cooperation from the other participating party.

Comment: Many commenters expressed concern that the SEA/IHE competition represented a diversion of funds from established programs to a new program not required by law. Commenters questioned the authority and policy underlying the announcement of the cooperative grant program.

Response: A change has been made to the application notice, but not the priority. Funds have not been diverted from established programs to a new program not required by law. The funding level for the other training programs is not reduced from the originally announced level. This priority is authorized under the recent EHA amendments, Pub. L. 99–457, and will be funded from the appropriation increases provided by Congress between 1986 and 1987. However, because of widespread confusion regarding the priority, the number of projects estimated to be funded in the application notice will be reduced from 100 to 20. Funds not used for the SEA/IHE priority will be used for training projects in other areas.

Comment: Some commenters stated that although they felt the concept of encouraging SEA/IHE cooperation theoretically sound, a "forced fiscal and administrative partnership" would be counterproductive to collaboration between States and institutions of higher education. Specifically, some commenters objected to the proposal that grant applications be jointly signed by SEAs and IHEs. In addition, some commenters objected to the proposed priority because they viewed it as setting the stage for block granting all Part D funds back to the State level.

Response: A change has been made. The application may be signed by the IHE(s) with the written acknowledgement of cooperation from the SEA, or by the SEA with written acknowledgement of cooperation from the IHE(s).

The SEA/IHE competition does not set the stage for block granting Part D programs. Congress has structured Part D of the Education of the Handicapped Act in a way that precludes block granting of awards. At least 65 percent of the funds available under Part D must be awarded under section 631(a) to institutions that meet "State and professionally recognized standards for the preparation of special education and related services personnel". At least 10 percent of the Part D funds must be awarded to "private nonprofit organizations" to train parents under section 631(c). The remaining 25 percent of funds are divided among 3 mandated national clearinghouses, special projects, and the legislatively expanded section 632 activities, which include mandatory grants to SEAs.

Comment: Many commenters felt that simultaneous publication of the proposed priority and the notice inviting applications was inappropriate because it limited meaningful dialogue between the field and the Department. Also, some commenters noted that the six-week period for submission of proposals was an insufficient time in which to develop quality proposals. These commenters requested that the Department invite further comment and discussion on the priority and also extend the time period for submission of applications.

Response: A change has been made. The closing date for submission of application notices has been extended by two weeks from July 13, 1987, to July 27, 1987. While the Department makes every effort to publish final priorities before requesting applications, the Department sometimes is required to request applications and comments on a proposed priority at the same time when if schedule does not permit these steps to be taken sequentially. In response to public comments, the priority has been changed to significantly simplify applications. The Department intends to maintain a continuing dialogue to seek better ways of coordinating SEA and IHE activities in order to help ensure that the needs of infants, toddlers, children and youth with handicaps for trained personnel are met.

Comment: A few commenters criticized the focus of the competition on preservice training. They argued that Congress had crafted section 632 to support both preservice and inservice training and thus, grantees should be given greater latitude in determining which type of training they will provide.

Response: No change has been made. The Department believes that it is in the best interest of infants, toddlers, children, and youth with handicaps to fund only preservice training through this competition. Inservice training needs can be addressed by SEAs through the mandatory State grant each State receives. In addition, because SEAs have been primarily concerned with inservice training in the past, one purpose of this competition is to encourage the involvement of SEAs in preservice training.

Priority

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to each application that meets the following priority:

1. Awards will only be made for preservice training of personnel for careers in special education of infants, toddlers, children and youth, or supervisors of those personnel.

2. Applications must demonstrate evidence of a cooperative effort between SEAs and IHEs in jointly planning the project, and in on-going coordination for purposes of carrying out, monitoring, and evaluating the project.

3. Training must be consistent with personnel needs identified in the State's or, if applicable, the adjacent State(s) comprehensive system of personnel development.

4. Applications must: (a)(1) be jointly signed by the SEA and the IHE(s) involved in carrying out the project, and (2) specify whether a party other than the SEA will be the fiscal agent; or (b) be signed by the IHE(s) with the written acknowledgment of cooperation from the SEA: or (c) be signed by the SEA with the written acknowledgment of cooperation from the IHE(s).

Period of Award

The projects funded under this priority will be funded for a period of 12 to 60 months. However, most projects will be for 36 months. Awards will be subject to the availability of Federal funds.

(20 U.S.C. 1432)

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped).

William J. Bennett,

Secretary of Education.

[FR Doc. 87-15521 Filed 7-7-87; 8:45 am]

BILLING CODE 4000-01-M

Invitation To Apply for New Competitive Awards Under the Training Personnel for the Education of the Handicapped Program for Fiscal Year 1987

AGENCY: Department of Education.

ACTION: Revised application notice.

SUMMARY: An application notice for this competition was published in the **Federal Register** on May 27, 1987, at 52 FR 19812. A notice of proposed priority for the competition was published in the same issue of the **Federal Register** also at 52 FR 19812. A final priority notice containing some changes from the proposed priority is published in this issue of the **Federal Register.** In order for applicants to revise or submit applications based on the revised priority, the deadline for transmittal of applications is extended from July 13, 1987, to July 27, 1987. In addition, the number of anticipated awards is revised from 100 to 20.

FOR FURTHER INFORMATION CONTACT: Richard Champion, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4625—M/S 2313, Washington, DC, 20202. Telephone: (202) 732-1158.

Dated: July 2, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87-15522 Filed 7-7-87; 8:45 am]

BILLING CODE 4000-01-M

Federal Register

Wednesday
July 8, 1987

Part X

Environmental Protection Agency

40 CFR Part 761

Polychlorinated Biphenyls; Exclusions, Exemptions and Use Authorizations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-62053; FRL 3176-1]

Polychlorinated Biphenyls; Exclusions, Exemptions and Use Authorizations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), generally prohibits the manufacture, processing, distribution in commerce, and use of polychlorinated biphenyls (PCBs). EPA issued a final rule published in the **Federal Register** of July 10, 1984 (49 FR 28172), prescribing conditions under which certain manufacturing processes were excluded from the TSCA prohibitions, and prescribing conditions on the use of PCBs in hydraulic and heat transfer systems. This document proposes to amend the July 10, 1984 rule (the "Uncontrolled PCBs" Rule) by excluding additional materials from regulation, based on EPA's determination that activities involving these materials do not present an unreasonable risk of injury to health or the environment. In addition, this document proposes: (1) To elimination from the use authorization for PCBs in heat transfer and hydraulic systems, the requirement that Viton® elastomer gloves be worn by workers performing maintenance on such systems; (2) to exclude from the ban on use and distribution in commerce, certain equipment and materials which have been adequately decontaminated; and (3) to amend the definition of "recycled PCBs."

DATES: The public is asked to submit written comments by September 8, 1987. If persons request time for oral comment by August 24, 1987, EPA will hold an informal hearing in Washington, DC, on or about September 21, 1987. The exact time and location of the hearing will be available by telephoning EPA's TSCA Assistance Office at the number listed under **"FOR FURTHER INFORMATION CONTACT."** Any informal hearing will be conducted in accordance with EPA's "Procedures for Conducting Rulemaking Under Section 6 of the Toxic Substances Control Act" (40 CFR Part 750). Persons who wish to participate in the informal hearing must write EPA's TSCA Assistance Office (see address under **"FOR FURTHER INFORMATION CONTACT"**). All requests to participate must include an outline of the topics to be addressed, the amount of time requested, and the names of participants. The informal hearing is meant to provide an opportunity for interested persons to present additional information or to discuss new issues, not to repeat information already presented in written comments.

ADDRESS: Since some comments are expected to contain confidential business information (CBI), all comments should be sent in triplicate to: Document Control Officer (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Comments should include the docket number OPTS-62053. Non-CBI comments received on this Notice will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excepting legal holidays, in Rm. NE G-004, at the above address.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, Toll free: (800-424-9065); In Washington, DC: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Overview of This Proposed Rulemaking

This document proposes several amendments to the regulation on "Uncontrolled PCBs," which EPA published in the **Federal Register** of July 10, 1984 (49 FR 28172). The July 10, 1984 regulation affected various activities involving PCBs at concentrations less than 50 parts per million (ppm). Specifically, this rule excluded certain PCB activities from the TSCA bans affecting PCB manufacture, processing, distribution in commerce, and use. Also, the rule authorized the use of hydraulic and heat transfer systems containing PCBs at concentrations less than 50 ppm for the remainder of their useful lives under prescribed conditions, including a requirement that workers performing maintenance work on such systems be supplied with the wear Vitron® elastomer gloves for protection. Petitions seeking judicial review of the July 10, 1984 rule were filed on September 24, 1984, by the American Paper Institute (API), the Fort Howard Paper Company (Ft. Howard), the Outboard Marine Corporation (OMC), and the American Die Casting Institute (ADCI). The various challenges to the rule were consolidated for resolution, and the Chemical Manufacturers Association (CMA) entered the litigation as an intervenor and respondent. On August 7, 1986, EPA entered into a settlement agreement involving API, ADCI, OMC, and CMA. These parties have agreed to dismiss their petitions for review as to all the outstanding issues within 30 days of final rulemaking by EPA in accordance with EPA's commitments in the Settlement Agreement.

The Settlement Agreement committed EPA to proposing specific amendments to the July 10, 1984 regulation, and to taking final action on a rule substantially similar to the proposal. In accordance with the August 7, 1986 Settlement Agreement, EPA is proposing the agreed amendments.

II. Background

Section 6(e) of TSCA generally prohibits the manufacture, processing, distribution in commerce, and use of PCBs. Under section 6(e)(2), the Agency may authorize non-totally enclosed uses of PCBs upon a determination that such uses will not present an unreasonable risk of injury to health or the environment. Also, under section 6(e)(3), EPA may by rule grant 1-year exemptions from the general manufacture, processing, and distribution in commerce prohibitions. Such exemptions may be granted where the petitioner can demonstrate: (1) That the activity to be exempted will not present an unreasonable risk of injury to health or the environment; and (2) that good faith efforts have been made to develop a substitute for PCBs which does not present an unreasonable risk.

A. Ban Rule History and Challenge to 50 PPM Cutoff

In the **Federal Register** of May 31, 1979 (44 FR 31514), EPA issued its first regulation implementing the TSCA section 6(e)(2) and section 6(e)(3) prohibitions. That first rule (the PCB Ban Rule) included among its provisions a general exclusion from regulation for materials containing PCBs at levels less than 50 ppm. The only exception to the general exclusion for less than 50 ppm materials was the prohibition on the use of waste oil as a dust suppressant, sealant, or coating. This prohibition applied to waste oils with any level of PCBs. 40 CFR 761.20(d).

The Environmental Defense Fund (EDF) obtained judicial review of the Ban Rule in the U.S. Court of Appeals for the District of Columbia Circuit. *Environmental Defense Fund, Inc.* v. *Environmental Protection Agency,* 636 F.2d 1267 (D.C. Cir. 1980). While EDF challenged several aspects of the Ban Rule, the significant aspect for the purposes of this proposed rule was the challenge to the general 50 ppm

regulatory cutoff. EDF was successful in its challenge to the general 50 ppm cutoff, and on October 30, 1980, the court remanded the Ban Rule to EPA for further action consistent with its opinion. The *EDF* v. *EPA* court found that there was not substantial evidence in the Ban Rule record which would support the decision to exclude generally from regulation all materials containing PCBs at concentrations less than 50 ppm. The court rejected, however, the contention that TSCA section 6(e) was intended to regulate every source of PCB contamination. Rather, the court concluded from the statute and its legislative history that section 6(e) was intended to regulate the "point sources" that might introduce additional PCBs into the environment. The court distinguished these point sources of new PCB contamination from the "ambient" sources of PCBs which were widely dispersed in the environment. Significantly, the *EDF* v. *EPA* court did not find that the use of a concentration-based regulatory cutoff would be inappropriate in all cases. However, it criticized the Ban Rule's general 50 ppm cutoff as too indirect a means of excluding ambient sources from regulation. The court stated that a proper exclusion would be either more finely tailored to the purpose of excluding ambient sources of PCBs, or, premised upon a finding that the designated cutoff does not involve an unreasonable risk to health or the environment. This decision was the impetus for the Agency's subsequent efforts at regulating PCBs at level less than 50 ppm.

On February 20, 1981, the Chemical Manufacturers Association (CMA), EDF, and other industry intervenors in the *EDF* v. *EPA* litigation filed a joint motion seeking a stay of the court's mandate overturning the 50 ppm cutoff established in the Ban Rule. The court granted the joint motion on April 13, 1981, thereby staying the issuance of its mandate pending the development by EPA of additional regulations concerning PCBs with concentrations less than 50 ppm.

B. EPA's Efforts at Regulating Less Than 50 PPM PCBS

1. *Inadvertently generated PCBs.* EPA undertook the regulation of the very low concentration PCBs (less than 50 ppm) in two phases. In the first phase, EPA issued the Closed and Controlled Waste Manufacturing Process Rule (47 FR 46980, October 21, 1982). This rule excluded from the general prohibitions certain chemical manufacturing processes defined as "closed" or "controlled waste" processes. These processes inadvertently generated PCBs as byproducts that presented only *de minimis* risk, in the sense that their regulation would provide no measurable benefit because the PCBs were generated at levels that were nonquantifiable for all practical purposes. The "closed" processes were manufacturing processes which generated PCBs, but released them in concentrations below the practical limits of quantitation in air, water, and products. "Controlled waste" processes, on the other hand, met the same restrictions on releases as the "closed" processes, except that waste streams containing greater than 2 ppm PCBs were subject to specified disposal requirements.

The second phase of regulation dealt with processes involving the "uncontrolled" PCBs, that is, manufacturing processes generating low concentration PCBs in other than "closed" and "controlled waste" processes. The Agency rejected an approach to regulation which would have established risk-based limits on a case-by-case basis for each such process generating PCBs. Instead, the Agency adopted a "generic exclusion" approach to the regulation of the "inadvertently generated" PCBs, modeled after the Closed and Controlled Waste Rule and a consensus proposal submitted by CMA, EDF, and the Natural Resources Defense Council (NRDC).

These non-Aroclor, inadvertently generated PCBs were the principal subject of the July 10, 1984, rulemaking. The exclusions announced in the July 10, 1984 rule expanded upon and superceded the exclusions for closed and controlled waste manufacturing processes. The generic exclusion for inadvertently generated PCBs applied to manufacturing processes which qualified as "excluded manufacturing processes." These excluded processes were defined in terms of established limits for PCB releases in products, air emissions, water effluents, and wastes. During this rulemaking, EPA evaluated risk assessments for carcinogenicity, as well as information concerning reproductive/developmental effects, environmental effects, and costs. The Agency concluded that the excluded materials, when generated under the prescribed conditions, would not present an unreasonable risk of injury to health or the environment. Significantly, the exclusion from regulation extends beyond the manufacturing processes that generate the very low concentration PCBs; the further processing, distribution in commerce, and use of the material are likewise excluded from the TSCA prohibitions.

The July 10, 1984 rule established the following PCB release limits as the criteria defining "excluded manufacturing processes:"

a. PCBs in products leaving the manufacturing site are limited to an annual average of less than 25 ppm, with a 50 ppm maximum.

b. Where the product is detergent bars, PCB concentrations in the product are limited to less than 5 ppm.

c. PCBs added to water discharges from the manufacturing site are limited to less than 100 micrograms per resolvable gas chromatographic peak per liter of water discharged.

d. Releases of PCBs in air emissions are limited to less than 10 ppm at the point where emissions are vented.

e. Disposal of process wastes above 50 ppm PCB must be in accordance with Subpart D of Part 761.

The above PCB concentration limits for excluded manufacturing processes are calculated according to the definition of "inadvertently generated non-Aroclor PCBs" set out in the definition of "PCB" at 40 CFR 761.3. This definition contains discounting factors for the monochlorinated and dichlorinated congeners.

2. *Recycled PCBs processes.* The July 10, 1984 rule also developed a generic exclusion approach for regulating manufacturing processes which recycle certain Aroclor PCBs (the "old PCBs") which were intentionally manufactured in the past, but which enter a manufacturing process as PCB-contaminated raw materials. The exclusion for these "recycled PCBs" processes is analagous to the exclusion for PCBs inadvertently generated in "excluded manufacturing processes." Like the latter exclusion, the exclusion for "recycled PCBs" is defined in terms of concentration limits on PCB releases to products, air emissions, water discharges, and wastes. Under these conditions, the Agency concluded that the exclusion of the PCB materials involved in recycling processes would not present an unreasonable risk to health or the environment. As in the case of the inadvertently generated PCBs, the exclusion extends to all further use, processing, and distribution in commerce activities connected with the materials.

By including "recycled PCBs" as a subject for the Uncontrolled PCBs Rule, EPA adopted the view that any manufacturing process with the potential to release PCBs to products or the environment was a "point source" for the introduction of additional PCBs.

The Agency believed that the potential for exposure from these very low concentration PCBs was similar, whether the PCBs traced their origin to newly generated PCBs or to raw materials contaminated from prior uses. The Agency intended therefore that "old" PCBs would be excluded according to the same generic, risk-based considerations as the "new" PCBs generated in chemical manufacturing processes as inadvertent byproducts. In other words, EPA understood that by focusing upon the "point source" manufacturing processes which generated very low concentration PCBs, it was discharging the regulatory mandate presented by the *EDF* v. *EPA* court. It was not EPA's intent to extend the coverage of the TSCA section 6(e) prohibitions to every conceivable source of "old," low level PCB contamination.

However, when EPA first embarked on regulating recycling activities involving "old" PCBs, it possessed very little information on their sources, the types of activities that involved their processing, distribution in commerce, and use, or the types and extend of possible exposures. Recognizing the deficiencies in the information base, EPA chose to elicit much of this information from the regulated community. In the Advance Notice of Proposed Rulemaking published in the **Federal Register** of May 20, 1981 (46 FR 27619), EPA solicited comment on the activities and exposures associated with "old" PCBs activities. The Agency also stressed the importance of developing sufficient information during the rulemaking to support any exclusions from the general statutory bans. Otherwise, the statutory bans could prohibit all activities involving low concentration PCBs which were not authorized or excluded (46 FR 27620). This approach was carried forward in the promulgation of the final Uncontrolled PCBs Rule. Particularly, with regard to "old" PCBs that were excluded as "recycled PCBs" processes, EPA believed that manufacturers involved with PCB contaminated raw materials would recognize the incentive to participate in the rulemaking process by identifying their processes and exposures.

The exclusion in the final rule prescribed conditions pertaining only to the two industries (paper pulp manufacturers and manufacturers of asphalt roofing materials) who commented on their recycling activities. As finally promulgated, the exclusion for "recycled PCBs" applied only to these manufacturers. Consistent with the approach first alluded to in the May, 1981 ANPR, EPA asserted in the final rule preamble that upon the effective date of the Uncontrolled PCBs Rule, any activity involving any quantifiable level of PCBs was banned unless the activity had been specifically excluded, exempted, or authorized by regulation (49 FR 28174). In short, a burden shifting device intended to elicit information from the manufacturers of new products became in practice the driving force for an outright prohibition of many activities involving existing products which were not considered by the Agency in developing the Uncontrolled PCBs Rule.

C. Overview of the Settlement Agreement

In connection with the August 7, 1986 Settlement Agreement, EPA agreed: To make good faith efforts to propose amendments to the July 10, 1984 rule within 7 months from the date of the Settlement Agreement; and to take final action on the proposed amendments within 9 months from the date of the proposal. Under the terms of the Settlement Agreement, EPA has also made the following substantive commitments.

1. EPA has agreed to propose an amendment to the present definition of "Recycled PCBs" found at 40 CFR 761.3, by eliminating condition (4) of the five conditions which qualify a process as a "recycled PCBs" process. The effect of the amendment will be to eliminate the condition limiting the amount of Aroclor PCBs in water discharges from a processing site at all times to less than 3 micrograms per liter (ug/l) for total Aroclors (roughly 3 parts per billion).

2. EPA would propose to authorize the processing, distribution in commerce, and use of products containing less than 50 ppm concentration as determined in accordance with the "PCB" definition set out at 40 CFR 761.3, provided that the products were "legally" manufactured, processed, distributed in commerce, or used prior to October 1, 1984. The term "legally" would refer to activities allowed by EPA by regulation, by exemption petition, by settlement agreement, or pursuant to other Agency-approved programs.

3. EPA would propose to authorize the distribution in commerce of equipment and other materials contaminated with PCBs, and not otherwise authorized by 40 CFR Part 761, provided that such materials were decontaminated in accordance with applicable EPA PCB cleanup policies in effect at the time of decontamination. However, if such equipment or other materials were not previously decontaminated in accordance with EPA PCB cleanup policies, the authorization will provide that it must be decontaminated in accordance with the cleanup policies in effect at the time of distribution in commerce.

4. EPA would propose an amendment deleting the requirement for Viton® elastomer gloves as a condition on the current use authorizations for hydraulic and heat transfer systems under 40 CFR 761.30(e)(6) and (7).

III. Discussion of the Proposed Amendments

A. Use Authorization for Hydraulic and Heat Transfer Systems

1. *Background.* In the 1979 Ban Rule, EPA authorized the non-totally enclosed use of PCBs at concentrations of 50 ppm or greater in hydraulic systems and in heat transfer systems (40 CFR 761.30(d) and (e)). The 1979 use authorizations contained conditions relating to testing and retrofilling which were designed to reduce the concentration of PCBs in these systems to levels less than 50 ppm by July 1, 1984.

With the overturning of the general 50 ppm cutoff, the systems containing less than 50 ppm PCBs would have become illegal without further Agency action. So, EPA included in the July 10, 1984 rule provisions authorizing the use of PCBs in hydraulic and heat transfer systems at concentrations less than 50 ppm for the remainder of their useful lives. The 1984 use authorizations imposed an additional condition requiring owners of systems to provide workers with Viton® elastomer gloves for protection against dermal exposure to PCBs. 40 CFR 761.30(d)(6) and 761.30(e)(6). These Viton® elastomer gloves were also required to be worn by workers performing repair and maintenance operations on such systems. 40 CFR 761.30(d)(7) and 761.30(e)(7).

The Viton® glove requirement was challenged in the OMC and ADCI petitions, and it has been the subject of several comments received by EPA after the promulgation of the July 10, 1984 rule. Because of the interest aroused by this requirement, EPA has reexamined the potential exposures and economic impacts presented by the inclusion of a protective clothing requirement referring exclusively to gloves formulated from Viton® elastomer. After considering economic information not examined during the previous rulemaking, and after further evaluation of the potential exposures, the Agency has concluded that the Viton® glove requirement is not necessary to protect against any unreasonable risks presented by the continued use of authorized heat

transfer and hydraulic systems. Therefore, EPA is today proposing to delete the requirement from the use authorizations for heat transfer and hydraulic systems.

2. *The exposure assessment.* The Viton® glove requirement arose from concerns raised by a May, 1984 exposure assessment conducted in support of the July 10, 1984 rule. (For details of the exposure assessment, see Vol. 4 of support document for July 10, 1984 rule entitled "Exposure Assessment for Incidentally Produced Polychlorinated Biphenyls"). Although EPA determined that, on the whole, there was only a very low carcinogenic risk from long-term dermal and inhalation exposures to PCBs in heat transfer and hydraulic systems, certain of the hypothetical dermal absorption situations modeled in the assessment were singled out as presenting the potential for significant exposures. Particularly, occupational dermal exposures during maintenance operations were believed by EPA to present the highest potential for such exposures.

Several variables were considered by EPA in 1984 to estimate the relevant occupational dermal exposures from these uses of PCBs. The variables included PCB dermal exposure, the frequency of exposure, the PCB exposure level, the skin area exposed, the absorption rate of PCBs through the skin, the liquid thickness on skin, the density of the liquid, and the PCB concentration in the liquid.

In addition, in evaluating the risk from these activities, other factors were important: The number, size, and estimated PCB contamination level of the hydraulic and heat transfer systems, and the estimated number of workers potentially exposed to PCBs from contaminated systems. For the purposes of the 1984 assessment, EPA inspection data were primarily used in developing estimates of exposures and risks.

EPA also used assumptions in the 1984 assessment which were designed to develop conservative or "worst-case" exposures. For example, EPA relied on the following conservative assumptions:

a. EPA assumed a constant 50 ppm exposure each workday for a period of 38.5 years.

b. EPA assumed that workers either wore no gloves of any kind during the occupational situations, or that any gloves worn did not protect against dermal contact with PCBs.

c. All types of operations (e.g., regular repairs, spill cleanup, draining and filling, and major repairs) were assumed to expose maintenance workers to the same dermal exposure levels.

d. EPA assumed that the potentially exposed maintenance workers were engaged full-time in maintenance work that would routinely bring them into contact with PCBs, resulting in PCB exposures 240 days per year, for a duration of 38.5 years.

e. EPA assumed that 100 percent of the PCBs contacting the skin were absorbed.

f. EPA assumed that the entire surface area of both hands (870 cm^2) became coated with a film of PCB-containing hydraulic fluid.

Based upon the above "worst-case" assumptions and other modeling assumptions, the assessment estimated a lifetime averaged daily dose (LADD) for maintenance workers of 3.8×10^{-4} mg/kg/day of PCB. These dermal exposures were found to be about two orders of magnitude higher than the estimated inhalation exposures. Identical dermal exposures were estimated for heat transfer systems.

This hypothetical dermal exposure was believed at the time to justify the imposition of the Viton® glove requirement. However, upon further examination, EPA has concluded that the 1984 assessment overstates the likely dermal exposures and associated risks, and that the estimated exposures do not justify the imposition of the enormous costs associated with the present protective glove requirements.

First, the assumption that PCB concentrations are constant at 50 ppm over the entire period of exposure (38.5 years) is not consistent with the circumstances that one would more likely encounter in dealing with this equipment. For example, the assumption does not reflect the actual efficiency of already conducted draining and refilling operations in reducing PCB concentrations to levels under 50 ppm. Also, the assumption does not account for the effects of normal leakage (on average, 2 volumes of fluid annually) in further reducing the actual PCB concentration when leaked fluids are reclaimed or replaced. The 1984 exposure assessment derived a reduction factor and equation to account for the combined effects of retrofilling and normal leakage on residual PCB concentrations. This equation has been used to extrapolate from the 1982 inspection data to project the current PCB concentrations in hydraulic and heat transfer systems. When one focuses upon the equipment that has been maintained to comply with the 1984 use authorization, this equation predicts that the effect of draining and refilling (to meet the 1984 50 ppm limit), as well as the effect of normal leakage, would be to reduce the current PCB concentrations to levels nearly an order of magnitude less than 50 ppm. This factor alone would produce lifetime averaged dermal exposures and associated risks an order of magnitude less than those derived using the "worst-case" assumptions.

Also, aside from the effects of retrofilling and leakage, the 1982 enforcement data point out the extent to which assuming constant 50 ppm exposures exaggerates the actual distribution of PCB concentrations among the systems sampled in 1982. The data base for the 1984 assessment shows that of 2,317 total systems sampled in 1982, 2021 (87.2 percent) were found to contain PCB levels at or below 25 ppm. An additional 3.4 percent were found with levels between 26 and 50 ppm, which would likely be reduced significantly over the intervening years since they were sampled. The 1982 enforcement data also demonstrate the extent to which the reported PCB concentration distribution was skewed by equipment not even in compliance with the 1979 use authorization. For example, although only 3.4 percent of the systems sampled were found with PCB levels above 1,000 ppm, the average among this group was determined to be 69,055 ppm.

EPA believes that the 1982 data, and reasonable extrapolations from that date, support the conclusion that the great majority of the presently authorized hydraulic and heat transfer systems will today have PCB concentrations well below 50 ppm. Moreover, the information available to EPA concerning the frequency with which these systems' fluid contents are regularly replaced suggests that the PCB contamination in these systems will continue to decline until it reaches de minimus levels. For these reasons, EPA believes that it is reasonable to conclude that the actual lifetime averaged PCB exposures resulting from heat transfer and hydraulic systems should be at least one order of magnitude less than those predicted by the 1984 assessment.

3. *Costs.* EPA also considered information not previously examined by the Agency concerning the costs to industry associated with an exclusive Viton® glove requirement. At the time the Uncontrolled PCBs Rule was issued, Viton® elastomer was the only material known to EPA that possessed the necessary resistance to PCB breakthrough. Although the costs of the Viton® gloves were significant, EPA reasoned that the incremental costs associated with the inclusion of the Vitron® glove condition were minimal

relative to the costs which industry would incur without a use authorization for less than 50 ppm systems.

However, in response to numerous comments received by the Agency after the promulgation of the July 10, 1984 rule, EPA has reexamined the costs associated with the Viton® glove requirement. EPA estimated the protected population of hydraulic and heat transfer system maintenance workers (15,306), and assumed a useful life for the gloves of one day (based on the limits of PCB breakthrough studies). With an approximate gloves cost per pair of $25, the additional cost over a 10-year operating period (discounted to present value) has been estimated at $620,718,000. The Agency considers these costs to be exorbitant, in light of the "worst-case" exposures estimated in the exposure assessment.

4. *The no unreasonable risk analysis.* A determination whether a risk from PCB use is unreasonable requires EPA to balance the probability that harm will occur against the benefits to society of the authorized use. EPA considers the effects of PCBs on health and the environment; the magnitude of exposure of the PCBs to humans and the environment; the benefits of using PCBs; the availability of substitutes for PCB uses; and the economic impact resulting from the rule's effect on the national economy, small business, technological innovation, the environment, and public health. EPA discussed these factors at length in the preamble to the Uncontrolled PCBs Rule (49 FR 28176). For purposes of this proposed rule, it is only necessary to reexamine the factors concerned with the magnitude of exposure and economic impacts.

EPA has concluded that the 1984 risk assessment overstates the likely dermal, occupational exposures presented by repair and maintenance operations by at least one order of magnitude. In addition, the incremental costs associated with the Viton® glove requirement are on the order of $600,000,000 over 10 years. The Agency has concluded that the potential risks presented by these activities do not warrant the imposition of incremental costs of this magnitude. Therefore, EPA is proposing to amend the use authorizations for hydraulic and heat transfer systems by eliminating the conditions requiring owners to provide, and maintenance workers to wear, gloves formulated from Viton® elastomer. The Agency emphasizes, however, that the elimination of the TSCA-based protective glove requirements does not affect any protective clothing requirements imposed under Federal or State occupational safety and health regulations, or under standard industrial hygiene practices.

EPA solicits comments on this proposal. Particularly useful comments would present information relevant to these issues:

a. More recent data showing the actual distribution of PCB concentrations among hydraulic and heat transfer systems in compliance with the 1984 use authorization.

b. Information on the actual conditions of exposure to hydraulic and heat transfer system maintenance workers, including frequency and duration of exposures, and measures taken to protect workers from dermal exposures to PCBs.

c. The availability of substitute glove materials which might protect against dermal exposures, including an identification of their costs, breakthrough times, and PCB permeation rates.

B. Water Discharge Limit for "Recycled PCB" Processes

The July 10, 1984 rule defined, among other things, the category of "recycled PCBs" processes excluded from the TSCA section 6(e) bans on manufacturing, use, processing, and distribution in commerce. These processes involved manufacturers who used raw materials contaminated with Aroclor PCBs. In response to the proposed Uncontrolled PCBs Rule, EPA received information from only two manufacturing industries-asphalt roofing materials manufacturers and manufacturers of pulp and paper products. Therefore, the exclusion announced in the July 10, 1984 rule permitted further PCB recycling activities only by these industries, and the conditions defining the exclusion related only to these two industries' products and processes. Similar to the approach adopted for inadvertently generated PCBs (the "excluded manufacturing processes"), the exclusion for "recycled PCBs" is defined by conditions limiting Aroclor PCB concentrations in the products, wastes, water discharges, and air emissions. The five conditions which define the excluded class are set forth in the definition of "recycled PCBs" codified at 40 CFR 761.3; the language excluding the class from the section 6(e) prohibitions is codified at 40 CFR 761.1(f). EPA determined in the final Uncontrolled PCBs Rule that PCB recycling activities conducted under these conditions would not present an unreasonable risk to health or the environment.

The condition relevant to this proposal is condition (4) pertaining to the allowed limits on releases of Aroclor PCBs in water discharges from sites processing paper products. This provision states: "The amount of Aroclor PCBs added to water discharged from a processing site must at all times be less than 3 micrograms per liter (ug/1) for total Aroclors (roughly 3 parts per billion (3 ppb))."

Petitioners Ft. Howard and API filed a joint petition challenging the 3 ppb total Aroclors discharge limit for recycled PCB processes. Petitioners' major concerns were:

1. The "at all times" language did not allow for any excursions beyond the 3 ppb limit due to higher than expected PCB levels in the waste paper stock used as raw materials.

2. The 3 ppb limit, being based only upon concentration, unfairly penalized firms which decreased the volume flow of their releases, and in so doing, exceeded the absolute 3 ppb limit.

EPA has reexamined the 3 ppb Aroclors discharge limit in light of petitioners' claims and other comments received by the Agency. The Agency is proposing to eliminate from the definition of "recycled PCBs" processes the condition limiting Aroclors releases in water discharges. As discussed more fully below, EPA has determined that the elimination of this condition will result in no decreases in protection of health or the environment, i.e., no unreasonable risk to health or the environment.

The 3 ppb water discharge limit for recycled PCBs was established after a thorough EPA evaluation of existing methods for quantitation of Aroclor PCBs in wastewater streams. The 3 ppb limit represented a level determined by EPA to be a universally achievable and reliable level of quantitation (LOQ) which would best ensure that no unreasonable risk to health or environment would be posed by these manufacturing processes. Although industrial wastewater discharges are generally regulated under Clean Water Act (CWA) authorities, rather than TSCA, the imposition of a TSCA-based restriction was believed at the time to be necessary to avoid a situation in which PCB discharges to water would be essentially unregulated.

Coordination with actual and potential CWA requirements was a difficult issue during the promulgation of the Uncontrolled PCBs Rule. EPA had proposed on November 18, 1982, CWA effluent limitations guidelines based on "best available technology" (BAT) and "new source performance standards"

(NSPS) which would limit discharges of Aroclor 1242 from mills in the deink subcategory of the pulp, paper, and paperboard point source category. Because these CWA guidelines and standards were not finalized, EPA believed it to be prudent to adopt the TSCA-based 3 ppb discharge limit for the deink mills as an interim measure pending the development of either more stringent limits under TSCA or more stringent limits under the CWA. For a more detailed discussion of the role of the PCB effluent limitation in the context of TSCA and CWA alternatives, see Unit VI.D. of the Uncontrolled PCB Rule preamble (49 FR 28187).

Since the promulgation of the final Uncontrolled PCB Rule, it has become apparent to EPA that the absolute 3 ppb concentration limit is inconsistent with the effluent limits proposed under the CWA, and the approach followed by states under their discharge-permitting authorities. The inconsistencies are the result of conflicting approaches to the regulation of discharges rather than the result of one limit being more stringent than another. Under the CWA approach to restricting discharges, PCB release restrictions are mass-based, i.e., discharge requirements may be met by limiting the volume flow as well as by limiting the PCB concentration in effluents. So, the strict 3 ppb limit under TSCA may indeed have the effect of punishing those companies which have reduced their volume flows and have consequently increased the relative PCB concentrations in their effluents.

After the promulgation of the final Uncontrolled PCBs Rule, EPA surveyed the various state agencies with jurisdiction over the water discharges from the affected deinking mills. The survey disclosed that there were 20 deinking mills potentially subject to the TSCA 3 ppb PCB discharge limitation. The survey also disclosed that for all but one of the 20 mills, the state permitting authorities, in coordination with EPA Regional Offices, have been regulating PCB discharges to water in a manner that is essentially equivalent to or more stringent than the 3 ppb limit under TSCA. The state agencies have been controlling these discharges through a combination of specific PCB limits in discharge (NPDES) permits and/or monitoring and testing requirements in permits to ensure that no PCBs are detectable in the waste streams. Generally, the standards applied by the states are consistent with the approach (mass-based limits) toward effluent limitations taken under CWA regulations and guidelines.

In the final Uncontrolled PCBs Rule, EPA determined that the risks associated with "recycled PCBs" were not unreasonable (49 FR 28180). The elimination of the condition limiting releases of Aroclor PCBs in water discharges to 3 ppb will not affect this determination. EPA has concluded that PCB discharges from the affected pulp and paper products mills are being adequately regulated by state permitting authorities under standards that accomplish a level of environmental protection which is equivalent to or more stringent than that accomplished under the 3 ppb limitation. Moreover, under the recently enacted Clean Water Reauthorization Act of 1987, Congress now requires that all states adopt water quality criteria within two years for chemicals which have been evaluated by EPA. Since, water quality criteria have already been published for PCBs, there is additional assurance that all present and future PCB effluents from recycling processes will be controlled. Indeed, the retention of the TSCA 3 ppb effluent limitation may conflict with the state regulatory programs. Therefore, EPA is proposing the elimination of the 3 ppb water discharge limitation from the definition of "recycled PCBs" at 40 CFR 761.3. The Agency solicits comments on this proposal.

IV. Status of Products Containing Less Than 50 PPM PCBs

A. Background

On the effective date of the Uncontrolled PCBs Rule (October 1, 1984), the Court of Appeals for the District of Columbia Circuit lifted the stay of the mandate that had been in place since the *EDF* v. *EPA* decision. The result of the court's action was the elimination of the general 50 ppm cutoff for activities banned under TSCA section 6(e), except for the products of "excluded manufacturing processes," "recycled PCBs," and the other activities specifically authorized or exempted under the regulations at 40 CFR Part 761. The Agency alluded to this outcome when it explained in the preamble to the Uncontrolled PCBs Rule that upon the lifting of the court's stay, any activity involving any quantifiable level of PCBs would be banned unless the activity was specifically excluded, exempted, or authorized by regulation (49 FR 28174).

The practical effect of this action was to make illegal many activities which were neither anticipated nor evaluated during the Uncontrolled PCBs Rule's development. The primary emphasis of the Uncontrolled PCBs Rule was on "point sources," i.e., the manufacturing processes that generate "new" PCBs as inadvertent byproducts or impurities. Also, the rule regulated the "point sources" consisting of paper pulp and asphalt roofing materials manufacturers, whose processes recycled "old" Aroclor PCBs that entered their processes as contaminated raw materials. Nevertheless, many other activities involving low concentration PCBs are now prohibited, regardless of the fact that they may present no greater risk than the activities specifically excluded in the July 10, 1984 rule.

Particularly with regard to "old" PCBs, the present regulations could be construed to regulate even the "ambient" PCBs which have already been dispersed to the environment. Since the inception of commerce in PCBs in 1929, hundreds of millions of pounds of Aroclor PCBs were used in a variety of applications. Prior to the enactment of the TSCA bans, PCBs had been widely used in very dispersive applications, including uses in paints and coatings, plasticizers, adhesives, wax and pesticide extenders, carbonless copy papers, and lubricants. Even in the case of the more contained uses of PCBs (e.g., as a dielectric, hydraulic, or heat transfer fluid), many years of use, servicing, and fluid reclamation have resulted in widespread, but generally low level PCB contamination in some existing products. Under the present regulatory language, which prohibits activities involving PCBs at any quantifiable level, violations involving the use, processing, and distribution in commerce of products contaminated with "old" PCBs are potentially as widespread as the low level contamination problem itself. Many such violations could conceivably be based upon products and activities which present no unreasonable risk to health or the environment. The Agency did not intent this result.

Petitioner OMC and Intervenor CMA have raised the issue of the status under the PCB regulations of the use, processing, and distribution in commerce of products containing "old" PCBs at levels less than 50 ppm. The Agency is clarifying the status of these materials by affirming that the existing regulations prohibit these activities, unless specifically excluded or otherwise allowed by regulation. However, EPA is proposing an amendment which would exclude the majority of these activities from regulation.

B. General Exclusion For Low Concentration PCBs in Products

1. *Scope of proposed exclusion.* This proposal would amend the existing

regulations by generally excluding from the TSCA section 6(e) prohibitions the processing, distribution in commerce, and use of products containing less than 50 ppm PCB concentration, provided these products were legally manufactured, processed, distributed in commerce, or used prior to October 1, 1984. The term "legally," as used in this exclusion, includes activities allowed by EPA by regulation, by exemption petition, by settlement agreement, or pursuant to other Agency-approved programs.

The Agency believes that the majority of products containing less than 50 ppm PCBs trace their low levels of contamination to one of three sources:

a. The presence of non-Aroclor PCBs as a byproduct or impurity in chemical manufacturing processes.

b. The contamination of products with Aroclor or other PCB materials from historic PCB uses.

C. Contamination during recycling activities involving the products described in a and b above.

Obviously, EPA cannot identify and assess individually every conceivable type of product contaminated at these very low PCB levels. So, EPA is adopting a generic exclusion, based upon the Agency's determination that the use, processing, and distribution in commerce of products with less than 50 ppm PCB contamination will not generally present an unreasonable risk of injury to health or the environment. However, because EPA is aware that some product uses and processing, particularly burning and other recycling of used oil, may present unique exposure and risk considerations, the subject of used oil with less than 50 ppm PCBs is discussed in unit IV.E. Unit IV.E. solicits specific comments on the proposal to include recycled used oil within the terms of the generic exclusion for products with less than 50 ppm PCBs, as well as comments on possible conditions which might be imposed on used oil recycling.

The remainder of this section explains EPA's rationale for a generic exclusion affecting products containing less than 50 ppm PCBs, where such products were legally manufactured, processed, distributed in commerce, or used prior to October 1, 1984. In addition to the material in section E dealing with recycled used oil, sections C and D discuss the generic exclusion in the context of two types of materials which appear to be representative of products contaminated with very low level PCBs. These products are chemical products contaminated with inadvertently generated non-Aroclor PCBs, but which were generated before October 1, 1984, and investment casting waxes contaminated with PCBs as a result of the historic use of PCBs as a wax extender, and the subsequent reclamation of these waxes.

2. *Exposures and risks.* EPA cannot possibly identify and assess the exposures from all the varieties of products which may be contaminated with PCBs at less than 50 ppm. Nevertheless, EPA believes that the products evaluated during the development of the Uncontrolled PCBs Rule are representative of the class of products subject to this amendment. Therefore, the conclusions arrived at by EPA regarding products (less than 50 ppm) known or believed to contain inadvertently generated PCBs are relevant to this discussion.

In support of the July 10, 1984 rule, EPA developed hypothetical, reasonable worst-case exposure scenarios to estimate exposures believed to equal or exceed the real exposures associated with broad classes of product types and exposure conditions. This exposure assessment evaluated inhalation exposures and dermal exposures in both occupational and consumer settings. The assessed scenarios emphasized products whose potential for exposure is large because of high frequency or duration of use. Among the products assessed for PCB exposure were moth control agents, space deodorants, paints, aerosol products, cosmetics, printing materials, textiles, and cleaning products. The results of the 1984 exposure assessment are presented in Vol. 1 of the support document entitled "Exposure Assessment for Polychlorinated Biphenyls (PCBs): Incidental Production, Recycling, and Selected Authorized Uses."

EPA concluded that the majority of the hypothetical exposures were insignificant, and in instances in which higher exposures were calculated, further evaluation of the assumptions showed that the estimated exposures overestimated actual expected exposures from the products.

In addition to the magnitude of exposures from these products with low concentration PCBs, EPA also considered the effects of the inadvertently generated PCBs on health and the environment, and the economic impacts of the rule. In the July 10, 1984 rulemaking, EPA found that its quantitative exposure and risk assessments supported the qualitative assessment that the activities excluded by the definition of "excluded manufacturing processes" did not present unreasonable risks. In short, the incremental risks associated with these activities, including the generation and use of products with PCB levels up to 50 ppm, were outweighed by the tremendous costs that would be incurred by producers, processors, and users if PCBs at these levels were to be banned (see 49 FR 28179). In addition, the products themselves were found to be essential non-luxury items with great societal value, so that a ban would deprive society of the benefits of these products.

EPA believes that the qualitative conclusions reached in 1984 with regard to products (with PCB concentration up to 50 ppm) from excluded manufacturing practices apply with equal force to the products excluded by this proposal. The products and exposures evaluated in 1984 are believed by EPA to be representative in general of products with large exposure potentials at the 50 ppm level of contamination. Therefore, EPA believes that the conclusion that product exposures were in fact insignificant applies generally to the assessment of potential exposures presented by this class of materials.

Likewise, EPA concludes that the incremental risk reduction from continuing the prohibition of activities involving such products is outweighed by the tremendous costs that would be incurred by a strict prohibition. The total economic burden of a prohibition triggered at the limit of quantitation can not be estimated with any accuracy. However, EPA believes that a no unreasonable risk determination for the entire class of materials can be justified generally from a consideration of the total economic burdens incurred with regard to the types of materials discussed in IV.C., IV.D., and IV.E. These materials (pre-1984 inadvertently generated PCBs, investment casting waxes, and recycled used oil) were selected for this analysis because they represent actual materials which comments have indicated pose regulatory concerns, and because they illustrate graphically the low return from regulating at these very low PCB concentrations.

C. Exclusion of Additional Inadvertently Generated PCBs

Intervenor CMA's primary concern with the existing regulations was the uncertain status of products contaminated with inadvertently generated PCBs which were generated prior to the effective date (October 1, 1984) of the Uncontrolled PCBs Rule. According to CMA, the current regulations do not specifically authorize the continued processing, distribution in commerce, and use of these PCB materials. CMA asserts that these

materials were legally manufactured because they contained less than 50 ppm PCBs when generated, or because they were exempted when manufactured and comply with the current rule's product concentration requirements when the discounting factors for mono- and di- chlorinated congeners are taken into account.

EPA has evaluated CMA's claims, and the Agency agrees that an amendment to the current regulations is necessary to clarify the status of activities conducted with regard to inadvertently generated PCBs manufactured prior to October 1, 1984. EPA has determined that the further processing, distribution in commerce, and use of these materials will not present an unreasonable risk of injury to health or the environment. Therefore, the Agency is proposing to include specifically these materials within the terms of the general exclusion for "excluded PCB products".

Clearly, the manufacture of these materials was legal. In the preamble to the July 10, 1984 rule, the Agency explained that the 50 ppm regulatory cutoff established in the PCB Ban Rule remained in effect during the duration of the stay of the *EDF* v. *EPA* court's mandate (see 49 FR 28174). That stay, and the 50 ppm cutoff for PCB manufacture, was in place until October 1, 1984. Also, there is no question concerning the legal manufacture of products above 50 ppm generated prior to October 1, 1984, where the materials were manufactured pursuant to an exemption or other authorization. These products also qualify as inadvertently generated PCBs where they meet the Uncontrolled Rule's prescribed product limits after discounting mono- and di-chlorinated congeners.

The proposed amendment will specifically exclude from regulation activities involving any such materials generated prior to October 1, 1984 with PCB concentrations up to 50 ppm, calculated using the discounting factors specified in 40 CFR 761.3. These products were legally manufactured before the effective date of the requirements pertaining to "excluded manufacturing processes," including the requirement that PCB concentrations in products be limited to an annual average of 25 ppm. The 25 ppm annual average was intended, like the other specified PCB release limits, only to limit PCB releases at the site of manufacture. Individual products, where less than 50 ppm, are free of these restrictions, and may be freely used, processed, or distributed further in commerce.

EPA believes that inadvertent generation products legally manufactured before October 1, 1984 should enjoy the same excluded status under the PCB regulations. Activities involving these materials will present no greater exposures or risks than those already evaluated by the Agency in relation to "excluded manufacturing processes." In the July 10, 1984 rule, EPA found that the potential exposures and risks from products so generated were generally insignificant. EPA estimated that prohibiting activities (at detectable PCB levels) involving all such materials would eliminate at most 100,000 lbs./yr. of inadvertently generated PCBs at costs in the range of $950 million to $5.6 billion over 10 years.

Although the quantity of inadvertently generated materials manufactured prior to October 1, 1984 has not been identified, the costs of prohibiting activities involving these materials, relative to the quantity of PCBs eliminated, should bear the same ratio as that calculated for the inadvertently generated PCBs covered by the July 10, 1984 rule. The determination that excluded manufacturing processes would not present unreasonable risks to health or the environment was based upon EPA's rejection of this cost-effectiveness ratio. Today's proposal is similarly based upon the rejection of the cost-effectiveness of regulating activities involving this subset of inadvertently generated PCBs. The Agency requests comments on this proposal.

D. Investment Casting Waxes

Subsequent to the issuance of the Uncontrolled PCBs rule, EPA received inquiries concerning the effect of the rule on the use and reclamation of investment casting waxes. The July 10, 1984 rule contained no exclusion applicable to these activities, therefore, they were prohibited at the limit of quantitation after October 1, 1984.

EPA has examined the facts surrounding past uses of PCBs as a wax extender, as well as the circumstances of residual low levels of PCB contamination in the stocks of reclaimed waxes. EPA is today proposing to include specifically investment casting waxes among the class of "excluded PCB products." Activities involving these waxes would be excluded from the TSCA section 6(e) bans if the waxes contain less than 50 ppm PCBs. EPA has determined that the further use, processing, and distribution in commerce of these waxes will not present an unreasonable risk of injury to health or the environment. Indeed, the analyses of exposures and costs of regulation for these materials demonstrate amply the limited cost-effectiveness that generally results from regulating products contaminated at the less than 50 ppm level.

Investment casting is a process for fabricating high-quality metal parts and shapes utilizing wax patterns that are enveloped or "invested" with ceramic shells. The ceramic shells are then fired, thereby melting the wax, which is replaced by molten steel. The casting process is faciliated by the use of sprues and gates which channel the flow of wax and metal to and from the patterns. Spent waxes are typically reclaimed by foundaries, because of the large price differential (about 50 percent) in the cost of reclaimed wax relative to new wax. The reclamation process (usually done off-site) involves the removal of unwanted ceramic contaminants and moisture and the blending with new wax as needed. Occasionally, new fillers are also added to the reclaimed product. The result is a reclaimed product which is suitable for reuse in the sprues and gates.

Small amounts of PCBs at concentrations below 50 ppm are found in existing stocks of casting waxes. These residual PCBs trace their origin to a history of intentional use of PCBs as fillers in waxes, and to the subsequent reclamation and reuse of these contaminated waxes. The PCBs were added to casting wax in order to reduce the extent to which wax expanded when heated, thereby preventing breakage of ceramic molds.

The PCB added intentionally to casting waxes consisted of decachlorobiphenyl ("deka"), which is the fully chlorinated biphenyl congener. These "deka" waxes often contained 30% PCBs by weight, although some waxes reportedly contained up to 40 percent PCBs (i.e., 400,000 ppm). In addition, the industry suggests that additional PCB contamination occurred on account of the addition to waxes of polychlorinated terphenyls (PCTs), which reportedly contained between 0.5% and 10% PCBs as impurities. In 1976, Monsanto discontinued the domestic manufacture of the "deka" PCB formulation, and this event began a course of decline in the PCB contamination found in casting waxes. However, before this course of decline began, the industry's wax was estimated to contain at least 250,000 pounds of PCBs.

Despite the heavy PCB burden once borne by investment casting waxes, EPA believes that no more than 5% of the waxes being used currently by foundries are contaminated with residual PCBs. Among the contaminated waxes, EPA estimates that the level of PCB contaminated averages no more

than 10 ppm. The extent to which PCBs have been eliminated from the inventories of casting waxes now in use can be explained in part by the nature of the use and reclamation cycle. During each cycle of use, up to 10 percent of the wax volume may be lost during the wax melting stage of the casting process. A like fraction of wax is estimated to be lost in the processing of the spent waxes by reclaimers, and a substantial amount (over 16 percent) is disposed of rather than reclaimed. Since wax is recycled almost four times per year, the result is a significant "flushing out" of old waxes from the inventories of waxes available for reuse. The net effect has been a substantial decline in the levels of PCBs contaminating these waxes. Based upon a total estimated wax inventory of approximately 4.2 million pounds, the Agency estimates that the entire load of "pure" PCBs in existing waxes amounts to between 2 and 6.6 pounds.

The estimates of PCB levels in the current casting wax inventory are based upon a mathematical model and not upon actual sampling data. The model extrapolates from 1976 data indicating that only 25 foundries used PCB-containing wax; these 25 foundries would represent about 10% of the 230 foundries operating today. Since reclaimed wax is segregated by foundry, the model assumes conservatively that the foundries which used PCBs in 1976 would still possess PCB-containing wax today. The model then assumes that 5% of the industry's wax could contain PCBs today, a figure much higher than that suggested by the PCB detection frequency reported by the industry. The assumption of 10 ppm as the average level of PCB contamination is based upon data provided by one industry source (Solomon, 1985). Finally, using information supplied by industry concerning the annual flows of casting waxes during disposal and reclamation, the model generates a conservative estimate that some 203,163 pounds of wax would today contain PCBs at the 10 ppm level. This volume corresponds to about two pounds of "pure" PCBs. For a fuller understanding of the model used to generate these estimates, see the Support Document entitled: "Cost-Effectiveness Analyses and Estimates of Exposed Population," (Putnam, Hayes, and Bartlett, 1987).

EPA has concluded that the few pounds of PCBs in wax products contaminated at about 10 ppm present the potential for only trivial exposures. The minimal risks presented by such exposures are grossly outweighed by the enormous costs associated with continuing the ban on activities involving these casting waxes. The total costs of a prohibition were calculated by summing the estimated costs to industry of purchasing replacement wax, disposing of wax, testing of wax shipments before reclamation, and decontaminating plant equipment. These calculations produce a cost effectiveness ratio in the range of between $50,747 and $297,547 per pound of "pure" PCB removed. The Agency therefore has determined that the further use, processing, and distribution in commerce of investment casting wax products will not present an unreasonable risk of injury to health or the environment.

EPA requests comment on today's proposal to include these products among those excluded from regulation as "excluded PCB products." In particular, EPA requests recent sampling data that would verify or refute the Agency's estimates of current PCB contamination in investment casting waxes. Information concerning the frequency with which PCBs have been detected and the level of contamination found would be most helpful, as would any information concerning the sources of PCB contamination in the inventories of new or reclaimed waxes.

A significant assumption used by EPA in estimating that existing stocks of waxes bear only insignificant amounts of PCBs is the assumption that no new sources of PCBs were added to wax inventories after the mid-1970's, when domestic sources of new PCB fillers were no longer available. However, EPA has investigated circumstances which suggest that large quantities of additional PCBs may have been processed and distributed to foundries by casting wax manufacturers and reclaimers, even after the effective date of the TSCA section 6(e) prohibitions on further PCB processing and distribution in commerce. The Agency emphasizes that today's proposal to exclude from regulation products contaminated with less than 50 ppm PCBs is conditioned on the source of contamination having been "legal" prior to October 1, 1984. EPA reserves its enforcement remedies against those who may have processed and distributed in commerce PCBs illegally, thereby exacerbating the contamination of existing stocks of casting waxes.

E. Used Oil

1. *Background.* Under the current regulations, there is considerable confusion regarding the status of used oil containing less than 50 ppm PCBs. The 1979 PCB Ban Rule excluded from regulation all activities involving PCBs at less than 50 ppm, except the use of waste oil, which was prohibited at any detectable PCB level as a dust suppressant, sealant, or coating. In the Support Documents for the 1979 Rule, EPA noted expressly that waste oils with less than 50 ppm PCBs could continue to be used as a fuel and as a feedstock in rerefining processes.

With the overturning of the general 50 ppm regulatory cutoff by the *EDF* v. *EPA* decision, activities (use, processing, or distribution in commerce) involving less than 50 ppm PCBs became prohibited on October 1, 1984, unless specifically authorized, exempted, or excluded by regulation. To date, EPA has specifically authorized only three reuses of oil products with less than 50 ppm PCBs: (1) The reuse of dielectric fluids (as dielectrics); (2) the reuse of hydraulic and heat transfer fluids (as hydraulic and heat transfer fluids); and (3) the reuse of waste oil as a feedstock by manufacturers of asphalt roofing materials manufacturers, under the conditions set out in the definition of "recycled PCBs" processes. Therefore, other used oil recycling activities are currently prohibited by the TSCA PCB regulations at any quantifiable PCB concentration, where these activities may involve use, processing, or distribution in commerce of PCBs. However, activities consisting solely of "disposal" are not prohibited, because TSCA disposal requirements generally apply to PCBs in concentrations greater than 50 ppm.

The TSCA PCB regulations (40 CFR 761.3) define "disposal" in terms of acts which "complete or terminate the useful life of PCBs and PCB Items." Under the PCB disposal regulations, the Agency requires the disposal of PCB wastes (>50 ppm) by prescribed methods which terminate the useful life of PCBs. These methods consists of:

a. Thermal destruction in high temperature incinerators (§§ 761.60(a)(1) and 761.70).

b. Thermal destruction in certain "high efficiency boilers" (§ 761.60(a) (2) and (3)).

c. Placement in chemical waste landfills (§§ 761.60(a)(4) and 761.75).

d. The alternative methods of PCB destruction approved under § 761.60(e).

Under the PCB regulations, "regulated disposal" (i.e., disposal in TSCA-approved disposal facilities) is required only for materials which contain 50 ppm or greater PCBs, as well as for materials which contain less than 50 ppm PCBs on account of dilution. Nevertheless, where materials contain less than 50 ppm PCBs, their "unregulated disposal" status does not mean that EPA has authorized their indiscriminate dumping

or unrestricted use. The Agency construes "unregulated disposal" as meaning only that disposal need not occur in TSCA regulated disposal processes.

In this context, the Agency considers that used oil recycling activities which constitute reuse or processing for reuse to be subject to the current TSCA section 6(e) prohibitions, unless specifically authorized, exempted, or excluded. In other words, where recycling constitutes a reuse or a processing of used oil for reuse, and the recycled used oil contains PCBs at quantifiable levels, the current regulations prohibit such recycling, unless the recycling activity also terminates the useful life of the PCBs by fully destroying the PCBs.

Therefore, materials (including used oil) with less than 50 ppm PCB concentrations may, under the existing regulations, be burned in combustion units which accomplish PCB destruction. For example, the thermal destruction units approved for destruction of >50 ppm wastes are acceptable, as are other boilers and incinerators which meet the prescribed combustion criterial for high temperature incinerators or high efficiency boilers. Also, in the definition of "qualified incinerator" at 40 CFR 761.3, the Agency has stated that incinertors approved under section 3005(c) of RCRA are acceptable for destruction of PCBs at <50 ppm concentrations. However, except when burned in combustion units which in fact accomplish PCB destruction, EPA considers that burning PCB-containing used oil for energy recovery is a "use" that is unauthorized under the current regulations. This interpretation is not affected by the fact that burning fuels for energy recovery might also be regarded as a "disposal" activity because it terminates the useful life of the PCBs. Indeed, burning PCBs in combustion units which do not accomplish PCB destruction may only volatilize the PCBs and create an additional "point source" of PCBs, as well as a potential source of toxic products of incomplete combustion. Under such circumstances, EPA rejects the argument that the dissipation of PCBs during the use of a contaminated material eliminates EPA's TSCA section 6(e) jurisdiction over that use, simply because one might also view the activity as terminating the useful life of PCBs. In short, where an activity presents both "use" and "disposal" aspects, EPA may regulate the "use" aspect at levels less than 50 ppm, PCBs, despite the fact that PCB "disposal" is generally unregulated at PCB concentrations under 50 ppm. EPA has previously relied upon the TSCA "use" and "processing" prohibitions to regulate activities with less than 50 ppm of PCBs that could be viewed as "terminating the useful life" of PCBs by dispersing PCBs directly to the environment during use. The regulation prohibiting the use of waste oil as a dust suppressant, sealant, or coating as well as the restrictions imposed on asphalt roofing manufacturers (restricted "processing") are but two examples of instances in which EPA has construed the "use" and "processing" authorities broadly to prevent environmental degradation. See 40 CFR 761.20(d) and definition of "recycled PCBs" at 40 CFR 761.3.

The distinction made clear today between burning that accomplishes destruction and other burning for energy recovery (restricted under "use" authority) may serve as the first official notice to many in the regulated community that their used oil recycling activities may be in violation of TSCA section 6(e). Nevertheless, EPA believes that the distinction is consistent with both the intent of the TSCA section 6(e) prohibitions, and the meaning of recycling contemplated by Congress when it defined "recycled oil" in the Used Oil Recycling Act (UORA) (42 U.S.C. 6903(36) through (39), 6932). This provision clearly states that recycled oil means any oil which is reused following its original use for any purpose, including burning.

Likewise, the current TSCA regulations prohibit other ongoing used oil recycling activities involving less than 50 ppm oils, such as the re-refining of lubricants and the processing of oils for other, non-fuel industrial uses. The Agency acknowledges that these prohibitions are not generally understood by the regulated community. This lack of understanding may be attributable to the fact that the all-inclusiveness of the TSCA section 6(e) bans, as made effective on October 1, 1984, was not clearly articulated by EPA in the July 10, 1984 rule as affecting used oil recycling. This document both clarifies this situation, and proposes to amend the regulations to authorize generally used oil recycling activities (use, processing, and distribution in commerce) involving used oil containing less than 50 ppm PCBs. EPA proposes to include specifically used oil among products excluded from regulation under the definition of "excluded PCB products." However, as discussed below, EPA is proposing to restrict used oil recycling activities by prohibiting the burning of used oil containing any quantifiable level of PCBs in nonindustrial boilers.

2. *Other regulatory initiatives affecting used oil.* EPA is currently engaged in a more comprehensive evaluation of used oil management practices under other regulatory programs. Currently, there are regulations in place which prohibit the burning of hazardous waste and certain "off-specification" used oil fuel in "non-industrial boilers." These regulations, which were published in the **Federal Register** of November 29, 1985 (50 FR 49164), established management standards for recycled used oil under the authority of RCRA Subtitle C (the hazardous waste program) and UORA. EPA also published in the **Federal Register** of November 29, 1985 (50 FR 49212) proposed standards under RCRA and UORA which would have imposed comprehensive management standards for used oil generators and transporters, facility standards for oil recycling and storage facilities, and tracking requirements for off-site shipments. This proposal was closely associated with the proposal to list used oil as a Subtitle C hazardous waste. For the reasons discussed below, the proposal to "list" used oil as a hazardous waste has since been withdrawn, at least to the extent that a listing would include recycled oil. The notice announcing EPA's withdrawal of the listing proposal appeared in the **Federal Register** of November 19, 1986 (51 FR 41900). Further, the issuance of recycled oil management standards has been deferred pending further evaluation.

The UORA is codified at section 3014 of RCRA. This provision directs EPA to promulgate regulations as may be necessary to protect human health and the environment from hazards associated with recycled oil. The UORA requires the Administrator to consider the economic impact of these regulations on the oil recycling industry; EPA must ensure that any such regulations do not discourage the recovery of recycling of used oil consistent with the protection of human health and the environment. In addition, under the 1984 amendments to RCRA, Congress directed EPA to determine whether to list used oil as a hazardous waste under RCRA section 3001. This amendment was the impetus for the November 29, 1985 listing proposal.

The proposal to list used oil as hazardous waste (50 FR 49258) was premised on data which suggested to EPA that used oil typically and frequently contains significant quantities of lead, other heavy metals, chlorinated solvents, toluene,

naphthalene, and other toxic materials at levels of regulatory concern. These materials were found to pose a significant risk of harm if mismanaged, particularly the risk presented by releases of heavy metals when used oil is burned.

EPA decided not to list recycled used oil as hazardous waste (51 FR 41900) because of the severe economic impacts that would be incurred by the recycled oil industry, and the serious disruptive effects on recycling activities. Commenters expressed concern about the costs of compliance with full hazardous waste management standards and the chilling effect these costs would have on recycling activities. This, in conjunction with the stigma associated with handling "hazardous waste," would likely lead to a curtailing of recycling activities, and produce a net environmental detriment as generators disposed of their used oil in uncontrolled ways, such as by dumping. EPA stressed the adverse effects that would arise if burning as fuel were no longer a recycling outlet, since burning is the major end use of recycled oil, and re-refining capacity does not appear to be sufficient to absorb the volume of oil that could not be burned. (51 FR 41901). EPA explained that further study was required before recycled oil management standards could be issued, and that the Agency needed to develop an overall used oil strategy that would avoid piecemeal regulation (51 FR 41904).

This proposal would make the TSCA regulations more consistent with the Agency's overall strategy for regulating the recycling used oil. After evaluating the risks posed by these activities, EPA has determined that the use, processing, and distribution in commerce of used oil containing less than 50 ppm PCBs does not generally present an unreasonable risk of injury to health or the environment. The Agency's reasons for making this determination are set out in subsequent sections of this unit, which discuss the evidence of PCB contamination in used oil, estimates of exposures and risks presented by used oil recycling, and the economic impacts of maintaining the current TSCA ban.

On the other hand, the no unreasonable risk finding for used oil recycling activities does not extend to the burning of PCB-containing used oil fuels in combustion facilities which operate under inefficient combustion conditions which might promote the formation of highly toxic, polychlorinated dibenzofurans (PCDDs). In this proposal, EPA has singled out the burning of used oil fuels in nonindustrial biolers as an activity meriting regulatory controls. The rationale for this approach is discussed in unit IV.F.

3. *PCBs in used oil.* There is widespread, but generally low level, PCB contamination in the oils handled in the nation's used oil management system. The PCBs in used oil trace their origin to residual PCBs from prior intentional uses of Aroclor PCBs (e.g., in askarel transformers and hydraulic systems), from incidental contamination from other sources, and from intentional and unintentional mixing of used oils with PCB-containing oils. This PCB contamination has been documented in several studies of the "flows" in the used oil system. For the purposes of this rulemaking, estimates of average PCB concentrations and proportions of used oil samples containing PCBs were derived from actual PCB measurements published in these studies and from other source specific information. For a detailed description of these sources and the methodology used in evaluating current used oil flows, see the Support Document for this proposed rule entitled "Cost-Effectiveness Analyses and Estimates of Exposed Population," (Putnam, Hayes and Bartlett, 1987).

The used oil management system accounts for the disposition of approximately 59 percent of the more than 1,300 million gallons of used oil generated in the United States. The system consists of several components, beginning with the generators who sell their used oil to collectors, and ending with a variety of end users of the recycled product. Between collection and end use, there are the minor and major processors who employ fairly simple processes which eliminate water and sediment from the oils, or distill off the more volatile fractions. Much of this oil is prepared for blending and burning as fuel; some is sold to refiners for additional processing into lube oils. End uses other than as fuels and re-refined lube oils include non-fuel industrial uses, road oiling, and disposal in incinerators or landfills. The used oil flow studies track the volumes of oil and their PCB concentrations as the oil moves among the components of the used oil management system to the various end uses. In this discussion, EPA distinguishes used oil which is collected, processed, and distributed within the used oil management system from that used oil which is discarded, burned, or otherwise recycled by the generator of the oil.

The oil not handled by the management system (41 percent) is reused on-site by generators or discarded. Of the quantities discarded by generators, over two-thirds is dumped. Of the quantities reused on-site by generators, the majority (65 percent) is burned as fuel.

The used oil products handled by the used oil management system were estimated to total about 788 million gallons, of which about 72 percent was burned as fuel, while 19 percent was reused as lubricants or in non-fuel industrial uses, and 5 percent was disposed of in disposal facilities. The dominance of burning among the end uses from oil recycling becomes apparent when one considers the totals for oils handled in the management system and burned on-site by generators. When the volumes which are dumped or disposed of are disregarded, burning accounts for fully 76 percent of all amounts reused, compared to only 20 percent used in re-refined lubricants and in non-fuel industrial uses.

The used oil flow studies also discloses much information about the extent of PCB contamination in the used oil system. When all used oil products were considered, PCBs were detected in 10.87 percent of samples, and among samples containing PCBs, the average concentration was 13.38 ppm. Even among the automotive sources of used oil, PCBs were detected in 5.6 percent of samples at an average concentration of 5 ppm. This fact suggests that PCB contamination may occur beyond the site of generation, as a result of mixing by collectors and processors.

4. *Exposure estimates in used oil recycling*—a. *Inhalation exposures from used oil burning.* Because burning is the dominant end use for recycled used oil, EPA believes that the greatest potential for human exposures to PCBs arises from these operations. This is particularly true for burning that occurs in small and medium boilers, where inefficient combustion of used oil fuels poses the greatest potential for volatilization and inhalation exposures. EPA used dispersion models to estimate ambient inhalation exposures resulting from burning used oils in a variety of boilers and space heaters. For this rulemaking, EPA adapted modeling work that was done by PEDCo Environmental, Inc., in 1984 for EPA's Office of Solid Waste. (See Final Report entitled: "A Risk Assessment of Waste Oil Burning in Boilers and Space Heaters," (PEDCo. 1984)). The PEDCo modeling work was the basis for a risk assessment used by EPA to estimate the risk associated with certain contaminants (e.g., lead, toluene, barium) other than PCBs which frequently appear in used oil fuels. The

PEDCo modeling work has been adapted for this proposal because the model boiler parameters used in the study were designed to represent reasonable, worst-case operating conditions. These modeling parameters were used in conjunction with dispersion models to derive estimates of annual average air concentrations within 5 km of an emission source (or group of sources). For a complete description of the modeling assumptions and input parameters used for this assessment, see the Support Document for this proposal entitled: "Assessment of Exposure Resulting from Recycle/Reuse of Dielectric Fluid Containing PCBs at Levels Less Than 50 ppm," (Versar, 1987).

Various configurations of small and medium sized boilers and space heaters (single and multiple sources) were modeled to estimate exposures in a densely populated urban area, particularly, the Central Park area of New York City. Boiler sizes represented ranged from $.1 \times 10^6$ Btu/hr to 100×10^6 Btu/hr; stack heights were varied from 2 to 30 meters. The conservative modeling assumptions included:

i. The assumption of a constant 50 ppm PCB concentration in all oils burned, with no subsequent dilution by mixing.

ii. The assumption of a 99 percent Destruction and Removal Efficiency (DRE) to account for poorly functioning small boilers and space heaters.

Under these modeling assumptions which were designed to produce reasonable, worst-case exposure estimates, the highest exposure estimates were generated by the larger boilers with lower stack heights. The highest exposure estimate for a single source (50×10^6 Btu/hr boiler with 10 m stack) was 7.34×10^{-4} mg/yr PCB. Of the multiple source runs, the highest exposure estimate (5.66×10^{-3} mg/yr) was generated by a configuration of 16 boilers, each with a 9.3×10^6 Btu/hr rating and a 10 m stack. These estimates may also be expressed in terms of an LADD, which for ambient inhalation exposures, is calculated under the assumption that a 70-kg person is exposed for 365 days per year over a lifetime measured by 70 years. When these calcuations are performed, the maximum exposure estimates may be expressed in terms of LADDs of 2.87×10^{-8} mg/kg/day (for the single source boiler) and 2.21×10^{-7} mg/kg/day (for the multiple source configuration).

EPA uses LADD estimates to derive estimates of the increased risk of developing cancer associated with the calculated PCB exposures. This is accomplished through a mathematical process which utilizes the LADD estimates and certain cancer potency factors which have been determined through exhaustive analyses of animal studies. Values for PCB cancer potency factors have been calculated by the Office of Research and Development (EPA, 1980b) to be 4.34 $(mg/kg/day)^{-1}$ and by the Office of Toxic Substances (EPA, 1985b) to be 3.57 $(mg/kg/day)^{-1}$. Currently, it is the Agency's practice to use an average of these values, or 4.0 $(mg/kg/day)^{-1}$, to derive its estimates of carcinogenic exposure risks. The Agency notes, however, that a more recent study (Norback and Weltman, 1985) reports a carcinogenic potency factor for PCBs of 7.7 $(mg/kg/day)^{-1}$. This study is under peer review within the Agency.

When the LADDs developed under the worst-case combustion conditions assumed in the modeling work are factored by the PCB cancer potency factors, the results are risk estimates which EPA believes to be insignificant. Therefore, EPA concludes that the ambient inhalation exposures associated with the volatilizing of PCBs during the burning of used oil (with PCBs at the 50 ppm level or lower) in small boilers are insignificant from a risk assessment standpoint. However, this analysis does not account for the potential inhalation exposures presented by certain products of incomplete combustion, particularly, exposures associated with the formation of polychlorinated dibenzofurans (PCDFs).

PCDFs may be generated as products of incomplete combustion in the burning of organic liquids containing PCBs or chlorinated benzenes. PCBs have been shown to be precursors of PCDFs when PCBs are heated in the presence of oxygen at 270 to 700 °C. Studies (Erickson et al. 1984) indicate that production of PCDFs during the combustion of PCBs in mineral oil is optimized when combustion occurs at 675 °C, with 8 percent excess oxygen, and a residence time in the combustion zone of about 0.8 seconds. The maximum conversion efficiency of PCBs in mineral oil to PCDFs was reported by the Erickson studies to be about 1 percent. Because the Erickson experiments were designed to find optimum conditions for PCDF formation, the 1 percent PCDF conversion efficiency result must be regarded as a very conservative estimate. Under actual boiler operating conditions, one would generally expect a PCDF conversion efficiency of much less than 1 percent.

Any potential for PCDF formation from the incomplete combustion of used oil containing PCBs is a regulatory concern, because these compounds are believed to exhibit extreme toxicity. The suspected toxicity of PCDFs was discussed at length in the preamble to the "PCB Fires Rule" published in the **Federal Register** of July 17, 1985 (50 FR 29170). The discussion in the PCB Fires Rule emphasizes that the majority of toxicological testing of products of incomplete combustion (PICs) has been limited to 2,3,7,8,–TCDF and 2,3,7,8–tetrachlorodibenzo-p-dioxin (TCDD). The toxicological testing of PCDFs, specifically 2,3,7,8–TCDF, has been more limited than testing of 2,3,7,8–TCDD. The acute oral LD50 in the guinea pig is reported to be 5 micrograms per kg bw (compared to 0.6 micrograms per kg bw for 2,3,7,8–TCDD). Also, subchronic testing of 2,3,7,8-TCDF in rhesus macaques indicated that the compound is extraordinarily toxic, producing effects which are clinically and morphologically similar to acute or chronic ingestion of 2,3,7,8–TCDD. In fact, for most of the observed biological effects, the potencies of the two compounds are within an order of magnitude of each other, with 2,3,7,8–TCDF being somewhat less toxic than 2,3,7,8–TCDD.

The available information on 2,3,7,8–TCDD, however, indicates that it is one of the most toxic substances known to man. It exhibits delayed biological response in many species and is highly lethal, at low doses, to aquatic organisms, birds, and mammals. It has been shown to be acnegenic, fetotoxic, teratogenic, mutagenic (limited evidence), carcinogenic, and it adversely affects the immune response in mammals. The evidence suggesting the extreme toxicity of 2,3,7,8–TCDD is discussed at length at 50 FR 29174.

Based on the Agency's assessment of the available literature on the toxicity of 2,3,7,8–TCDF and its structural similarity to 2,3,7,8–TCDD, EPA has concluded that it is prudent to assume that exposures to 2,3,7,8–TCDF would pose risks to similar toxic effects as exposures to 2,3,7,8–TCDD. Further, based on structure-activity relationships and limited in-vitro studies, EPA assumes that other PCDF congeners may also pose risks of similar toxic effects as exposure to 2,3,7,8–TCDF and 2,3,7,8–TCDD.

For the purposes of this proposal, EPA estimated hypothetical, worst-case exposures to PCDFs generated during the burning of PCB-containing used oil in small and medium boilers and space heaters. EPA calculated these PCDF exposure estimates by applying very conservative assumptions to the

modified PEDCo model used to estimate exposures to volatilized PCBs. In addition to the conservative assumptions used to develop the estimates of potential PCB exposures, EPA assumed the presence of the combustion conditions which optimize the formation of PCDFs. In other words, the risk assessment assumed that combustion occurred under inefficient conditions producing maximum PCDF formation (1 percent of the PCB feed rate). Also, all of the PCDFs formed are assumed to consist of the most potent PCDF isomer, namely, 2,3,7,8–TCDF. Finally, in order to derive risk estimates, the carcinogenic potency of 2,3,7,8–TCDF was assumed to be one-tenth that of 2,3,7,8–TCDD. This latter assumption results in cancer potency factor for PCDFs of 1.6×10^{4} $(mg/kg/day)^{-1}$.

A worst-case estimate of potential PCDF exposures can be derived by assuming that all the PCDFs formed during burning exit in the boiler's stack gas, and that the PCB to PCDF conversion efficiency is 1 percent. These assumptions indicate a PCDF emission rate of (.01 × PCB feed rate), which is equivalent to the PCB emission rate when a boiler DRE of 99 percent is assumed. In other words, the ambient inhalation exposure models predict worst-case PCDF emissions and exposures equal to the maximum ambient PCB emissions and exposures presented in the preceding assessment of ambient inhalation exposures from volatilized PCBs. Therefore, the maximum PCB LADDs estimated above for the single source and multiple source boiler configurations (respectively, 2.87×10^{-8} mg/kg/day and 2.21×10^{-7} mg/kg/day) are also representative of the worst-case LADDs for PCDFs associated with the burning of used oil containing 50 ppm PCBs in inefficient boilers. However, when these LADDs are factored with the PCDF cancer potency factor [1.6×10^{4} $(mg/kg/day)^{-1}$], one may calculate estimates of worst-case carcinogenic risks in the 1×10^{-3} to 1×10^{-4} range. To the extent that there are combustion units which actually operate at or near the inefficient combustion conditions assumed in the risk assessment, the worst-case, the PCDF inhalation exposures predicted by the models are in a range which EPA considers to be significant. However, EPA believes that under the combustion conditions which actually obtain for most boilers, the rate of PCDF formation would be much lower than the maximum conversion efficiency (1 percent of PCB feed rate) assumed in the assessment. In particular, the following factors support this belief:

(1) The assessment assumes a constant 50 ppm PCB concentration in all oil samples burned. In fact, the sampling data available to EPA discloses that on average, only about 10 percent of used oil samples contain PCBs, and that among these samples, the observed PCB concentration avarages about 13 ppm. This correction for actual PCB distribution among used oil samples reduces the calculated risk estimates by more than an order of magnitude.

(2) The assumed 99 percent DRE probably exaggerates the inefficiency of most boilers and space heaters in destroying organic wastes. Actual field studies (Fennelly et al. 1984) performed on small (0.4×10^{6} to 25×10^{6} BTU/hr) commercial boilers resulted in DREs for organics ranging from 99.82 percent to higher than 99.9 percent. In only one case was a DRE below 99.9 percent reported. With a DRE of 99.9 percent (attainable by many boilers), the PCDF risk estimate is an additional order of magnitude less than that calculated under the assumed 99 percent DRE.

(3) The assumption that optimal conditions for furan formation occur during the entire burn period, producing PCDFs at the maximum generation rate (with all congeners exhibiting the toxicity of 2,3,7,8–TCDD), also tends to overstate the potential risk. In fact, "optimal" conditions for PCDF formation might only occur during brief burn upset conditions, and the PCDF's generated would likely consist of less potent congeners than 2,3,7,8–TCDF).

Because of the compounding effects of these assumptions, EPA believes that the worst-case exposure estimates for PCDF formation greatly overstates the actual inhalation exposure risks posed by these compounds during the burning of used oil fuels. EPA believes that, when the actual PCB concentration distribution in used oil samples is taken into account, as well as the actual combustion efficiency attainable by most boilers, the potential for PCDF formation during the burning of used oil fuel is in fact insignificant.

Nevertheless, as developed more fully in unit IV.F, EPA is concerned about the potential for PCDF formation posed by burning PCB-containing used oils in those small boilers which may operate under very inefficient combustion conditions. So, while the exposure assessment supports the conclusion that the burning of used oil (with <50 pp PCBs) generally presents insignificant PCB and PCDF inhalation exposures, the information currently available to EPA does not enable EPA to conclude that the burning of used oil in all types of combustion units does not present significant exposures. The final rule, therefore, may include restrictions on used oil burning in the smaller combustion units that EPA believes, as a class, are likely to pose the greatest potential for PCDF exposures. The proposed restrictions on used oil burning in these facilities (the "nonindustrial boilers") are explained in unit IV.F., entitled "Proposed Restrictions On Burning Oil in Nonindustrial Boilers."

b. *Occupational dermal exposures.* EPA also examined the waste oil management system to determine whether waste oil management activities present occupational, dermal exposures of regulatory significance. Conservative estimates of occupational, dermal exposures were calculated using assumptions designed to generate "worst-case" estimates. Immediate and total absorption of PCBs was assumed over the entire surface area of both hands, without the use of protective clothing, for a period of 38.5 years. Using these modeling assumptions, EPA calculated LADDs on the order of 10^{-3} to 10^{-4} mg/kg/day.

In determining the significance of these exposures, EPA must take into account any reliable information which suggests that the "worst-case" asssumptions overstate actual exposures. In addition, EPA must consider estimates of the worker population potentially exposed to PCBs in the used oil management system. EPA believes that the following factors result in "worst-case" occupational, dermal exposure estimates which greatly overstate the actual PCB exposures attributable to the management of waste oil:

i. The used oil flow data (Franklin, 1984) suggest that PCBs are found on average in about 10 percent of used oil samples at concentrations of about 13 ppm, rather than in all samples at 50 ppm. Moveover, barring the illegal introduction of additional PCB wastes (>50 ppm) used oil supplies, the concentration of PCBs in used oil would be expected to diminish further to approach de minimis levels.

ii. The assumption that the potentially exposed population (estimated at about 3,565 workers) would be exposed daily over a period of 38.5 years probably bears little relationship to the typical employment histories for workers in this field.

iii. The "worst-case" exposure estimates assumes no mitigation attributable to industrial hygiene practices and to the extensive

automation practiced in the collection and transport of used oil.

When these factors are taken into account, EPA believes that the "worst case" estimates overstate actual exposures by at least one order of magnitude. After considering the exposure estimates, the mitigating factors, and the size of the potentially exposed population, the Agency concludes that the likely occupational, dermal PCB exposures associated with used oil management activities are insignificant from a regulatory standpoint.

5. *Regulatory impact analysis.* EPA evaluated the inhalation and dermal exposures discussed in the preceding section because the Agency believed that these exposure pathways presented the greatest potential for significant exposures. However, the Agency's exposure evaluations have led EPA to conclude that these potential exposures are generally insignificant from a risk standpoint. One exception to this general conclusion is the potentially significant PCDF exposures presented by burning PCB-containing used oils in small, nonindustrial boilers. To deal with this exception, EPA is proposing specific restrictions on used oil recycling activities (reuse, processing, and distribution in commerce) that involve burning PCB-containing used oils in nonindustrial boilers. These restrictions are discussed in unit IV.F., entitled "Restrictions on Used Oil Burning in Nonindustrial Burners." The remainder of this section, however, addresses the Agency's rationale for generally excluding used oil products from the TSCA section 6(e) prohibitions as a form of "excluded PCB products."

In addition to a consideration of the toxicity of PCBs and the magnitude of exposures to humans and the environment, the TSCA unreasonable risk standard requires EPA to consider the economic impacts and other societal costs associated with the regulation of a chemical.

EPA evaluated the economic impacts of maintaining the current prohibition of all used oil recycling activities. (See Support Document entitled "PCB Rule Revision: Cost-Effectiveness Analyses and Estimates of Exposed Population.") Estimates were developed to reflect the costs associated with testing ($116.7 million), disposal ($128.6 million), lost resource value ($8.4 million), and cleaning ($36.1 million). In sum, EPA estimates that the total costs associated with the current prohibitions amount to $289.8 million. Based upon used oil flow data, the Agency estimates that a total population would have the effect of removing 8,428 additional pounds of "pure" PCBs which might otherwise be released to the environment. This reduction is achieved at a cost of $34,385 per pound of "pure" PCB.

In addition to these costs, society would lose the benefits derived from the recycling of used oil. Additional virgin oil would necessarily be consumed to replace the shares of fuel oil, re-refined lube oil, and other industrial oils which are now comprised of recycled used oils. Most significantly, the costs associated with the current prohibitions would discourage recycling, and give rise to backups in the used oil management system. Generators not able to distribute their used oils in commerce to recyclers will be tempted to resort to dumping and other types of uncontrolled disposal of their oil. This could lead to a net reduction in the level of environmental protection associated with used oil disposal.

EPA concludes that the risks associated with the recycling (use, processing, and distribution in commerce) of used oil products containing less than 50 ppm PCBs are generally outweighed by the enormous costs associated with prohibiting such activities, the costs associated with depriving society of the benefits of recycled oil products, and the net reduction in environmental protection associated with a curtailment in recycling activities. EPA concludes that the use, processing, and distribution in commerce of used oil containing less than 50 ppm PCBs do not generally present unreasonable risks of injury to health or the environment. Therefore, EPA proposes to include used oil products containing less than 50 ppm PCBs within the class of "excluded PCB products."

EPA requests comments on this proposal. Specifically, the Agency requests comments on these issues:

a. The exposure assessment relied on by EPA in this proposal concludes that the "worst-case" hypothetical exposures calculated by using conservative modeling assumptions overstate actual PCB exposures because of the assumption that all used oil samples contain PCBs at the ppm level. Used oil flow data available to EPA suggest that PCBs will be present in approximately 10 percent of oil samples, at an average concentration of about 13 ppm. EPA solicits any additional information regarding the distribution of PCBs (i.e., proportion of samples with PCBs and concentrations detected) among the components of the used oil management system. Are there sectors of the system which may contain a disproportionately greater proportions or concentrations of PCBs? If so, what are the sources contributing disproportionate amounts of PCBs to the used oil?

b. Under assumptions designed to develop hypothetical, worst-case exposure estimates, occupational, dermal exposures presented by used oil collection and processing activities approach levels of regulatory concern. What are the typical work practices (e.g., protective clothing, extensive automation, personal hygeine measures) that obtain in the used oil collection and processing industries that would enhance or mitigate the potential for these exposures? Are there particular segments of the used oil management system where the potential for occupational, dermal exposures may be greater than average?

Should comments convince EPA that these exposures may be significant, what restrictions (e.g., protective clothing) might EPA impose to guard against such exposures? Also, what would be the incremental costs associated with any such restrictions?

c. The proposal to exclude generally recycled used oil with less than 50 ppm PCBs from regulation would not affect the existing prohibitions (§ 761.20(d)) on the use of waste oil containing any detectable level of PCBs as a dust suppressant, sealant, or coating. These uses were singled out in the PCB Ban Rule because of their potential for direct and widespread dispersion of PCBs to the environment. Are their additional uses of waste oil which EPA should prohibit at PCB levels under 50 ppm, and which are not covered by the § 761.20(d) prohibitions. EPA solicits particular comment on whether there are waste oil uses that pose the potential for PCB contamination of human food or animal feed, or, marine uses of waste oil that pose the potential for significant exposures to water supplies or marine life. Responsive comments should identify with specificity the use or uses of concern, the potential PCB exposure pathway, and the nature of the animal feed, human food, water supply, or marine life that would be protected by any additional use prohibition.

F. Proposed Restrictions on Burning Used Oil In Nonindustrial Boilers

As explained in unit IV.E., this proposal would generally include used oil products within the class of "excluded PCB products" defined in 40 CFR 761.3. The effect of being so classified will be to exclude such products generally from the TSCA section 6(e) prohibitions relating to use, processing, and distribution in commerce. However, EPA is also proposing to except from the regulatory

exclusion those used oil recycling activities that involve the burning of PCB-containing used oils (<50 ppm) for energy recovery in nonindustrial boilers.

This approach is consistent with a final regulation published by EPA in the **Federal Register** of November 29, 1985 (50 FR 49164), relating to EPA's regulation of used oil burning under the authority of the UORA.

The November 29, 1985 rule (the "Burn Ban Rule") represents the first phase of EPA's efforts at developing a comprehensive regulatory program addressing the recycling and disposal of used oil. The Burn Ban Rule is an interim measure designed to protect the public health from the substantial hazards believed to be associated with the burning of hazardous waste fuels and certain used oil fuels in combustion units which were not designed to burn the hazardous contaminants which may appear in the fuels. The Burn Ban Rule is supported by a risk assessment (the PEDCo study) which enabled EPA to identify contaminants in used oil which may pose increased risks at levels of regulatory concern, particularly in urban areas where large numbers of potentially exposed individuals reside. The rule established "specification" levels for those toxic contaminants (lead, chromium, arsenic, and cadmium) identified by the risk assessment as being likely to appear in used oils at levels which could pose substantial risks. The specifications were established at levels which would be protective in virtually all circumstances, so that fuels meeting the specifications could be burned in any facility, including the nonindustrial boilers found in apartment buildings and office buildings. The levels specified are based upon the level corresponding to the 95th percentile detected in virgin oil, since regulating at levels less than those commonly found in virgin oil (which would replace prohibited fuels) would not provide any additional protection to health or the environment.

The Burn Ban Rule establishes certain controls, tracking mechanisms, and recordkeeping requirements, the total effect of which is to prohibit the buring of used oil fuels not meeting the specifications in "nonindustrial" boilers. The prohibition is accomplished by limiting the availability for burning of "off-specification" fuels to only the acceptable industrial boilers, utility boilers, and industrial furnaces which have notified EPA of their burning activities. The brunt of the controls are imposed on used oil marketers, who are responsible for determining that fuels meet or fail the specifications, and for directing any "off-specification" fuels to the acceptable combustion facilities.

The Burn Ban Rule prohibits the use of nonindustrial boilers, because EPA found that as a class, these boilers pose the most significant and immediate health risks when they burn off-specification used oil fuels. The rule explains that nonindustrial boilers include units located in single or multifamily residences; in commercial establishments such as hotels, office buildings, laundries, or service stations; and in institutional establishments such as colleges, hospitals, and prisons (50 FR 49193). Rather than defining the prohibited nonindustrial boilers, the rule identifies and defines the acceptable devices which may burn off-specification used oil fuels: industrial boilers, utility boilers, and industrial furnaces.

The Burn Ban Rule designates nonindustrial boilers for the prohibition because they are typically very small and unsophisticated units which may not achieve complete combustion of toxic organics. Complete combustion is not assured, because these units possess inadequate controls to maintain optimum combustion conditions when they are firing contaminated fuels. Moreover, nonindustrial boilers are seldom equipped with emissions control equipment which might control to some extent their toxic emissions. In addition to these design considerations, the Burn Ban Rule points out that the risks posed by nonindustrial boilers may be compounded by the typical location of these units in urban areas where sources are frequently clustered together. The typical urban locations may therefore result in increased ambient concentrations caused by overlapping plumes as well as exposures of individuals to higher emission levels at above-ground locations (50 FR 49191). Obviously the typical urban location of these facilities also gives rise to larger potentially exposed populations.

Because of the potential for PCDFs formation in inefficient combustion facilities burning PCB-containing used oil, EPA believes that a prudent course to follow in today's proposal is an approach consistent with that adopted in the Burn Ban Rule for burning hazardous waste and off-specification used oil fuels. Given the present uncertainty about the ability of smaller, unsophisticated boilers to maintain efficient combustion conditions to destroy toxic organics such as PCBs, EPA can not now conclude that allowing the burning of PCB-containing used oils in such units would not present an unreasonable risk to health or the environment. Further, EPA believes that the rationale set forth in the Burn Ban Rule preamble for designating nonindustrial boilers as the prohibited class of combustion facilities (50 FR 49191) provides an equally compelling argument for similarly restricting the burning of used oil products containing PCBs at the <50 ppm level. The proposed prohibition will afford an interim measure of prudent control, pending developments in EPA's ongoing, comprehensive evaluation of combustion conditions in various boilers and furnaces. This evaluation will result in the promulgation of rules prescribing combustion performance standards under RCRA. When these rules are effective, combustion facilities will be either allowed or not allowed to burn hazardous waste fuels based on their actual combustion capabilities, rather than on their classification as "industrial" or "nonindustrial" boilers or furnaces. These facilities will also become available for burning used oil fuels with <50 ppm PCBs under today's proposal.

In order to avoid duplicative or inconsistent approaches to the regulation of used oil burning, today's proposal under TSCA refers to and tracks the significant provisions which implement the nonindustrial boiler prohibition under UORA.

1. *Identification of acceptable burners.* First, this proposal identifies the classes of combustion facilities which are eligible to burn used oil fuels containing <50 ppm PCBs. One class of eligible facilities consists of the "qualified incinerators" defined in 40 CFR 761.3. Although this definition was originally intended to identify combustion units suited for the disposal of wastes from "closed waste manufacturing processes" (47 FR 46987), the combustion facilities covered by the definition were found to be adequate to accomplish the safe destruction of wastes containing PCBs at levels between the limit of quantitation (generally 2 ppm) and 50 ppm. These units were found to be adequate not only to ensure the safe destruction of PCBs in these wastes, but also to prevent the formation of dibenzofurans and other potentially toxic products of incomplete combustion.

The proposal would amend the definition of "qualified incinerator" codified at 40 CFR 761.3. The current definition states that only those high efficiency boilers specifically approved to burn PCBs present in fluids other than mineral oil (see § 761.60(a)(3)) are included within the class of "qualified

incinerators." Under the carefully controlled combustion criteria spelled out in § 761.60(a)(2)(iii)(A) and § 761.60(a)(3)(iii)(A), however, EPA believes that the combustion of used oil fuels with <50 ppm PCBs will not pose significant exposure risks. So, EPA is proposing to delete the reference to approved high efficiency boilers under § 761.60(a)(3), and to replace the deleted language with a reference to the high efficiency boiler criteria and notification requirements spelled out in § 761.60(a)(2). This amendment would require the attainment of the same combustion conditions as previously required, but it will replace the approval requirement with the simpler requirement of notification to the EPA Regional Administrator as stated in § 761.60(a)(2)(iii)(B).

Thus, the amended definition of "qualified incinerator" would designate one of the classes of combustion units eligible for burning used oil fuels with <50 ppm PCBs. The "qualified incinerator" class includes: (1) Incinerators approved for PCB destruction under § 761.70; (2) high efficiency boilers which operate under the conditions of § 761.60(a)(2)(iii)(A) and which have notified EPA of their used oil burning activities under § 761.60(a)(2)(iii)(B); and (3) incinerators approved under the authority of RCRA section 3005(c).

Second, this proposal would make another class of combustion facilities eligible for the burning of used oils with <50 ppm PCBs. The proposal includes the class of combustion facilities recognized as acceptable for burning off-specification "used oil fuels" under 40 CFR Part 266, Subpart E. This second class consists of the "industrial furnaces" and "boilers" which are identified in 40 CFR 266.41(b), and which have notified EPA of their used oil burning activities.

These boilers and furnaces are identified in 40 CFR 260.10 and § 266.41(b). Under § 260.10, "industrial furnaces" mean those devices specifically listed by EPA as enclosed devices that are integral components of manufacturing processes and that use controlled flame devices to accomplish recovery of materials or energy. EPA has also identified criteria for listing other devices as industrial furnaces. To date, the list of industrial furnaces includes cement kilns, lime kilns, phosphate kilns, aggregate kilns (including asphalt kilns), coke ovens, blast furnaces, and smelting, melting, and refining furnaces.

The definition of "boiler" is also set out at § 260.10 of the RCRA regulations. These "boilers" are described as enclosed devices using controlled flame combustion and having specified characteristics. The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases. The unit's combustion chamber and primary energy recovery section(s) must be of integral design, and it must maintain a thermal energy recovery efficiency of at least 60 percent while in operation. Also, units qualifying as RCRA "boilers" must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. (40 CFR 260.10). Moreover, under the criteria set out in 40 CFR 260.32, the Regional Administrators may designate additional enclosed, controlled flame combustion devices as "boilers" on a case-by-case basis.

The Burn Ban Rule implements the restrictions on the burning of used oil fuels by designating a subset of "boilers" which, in addition to "industrial furnaces," may lawfully burn off-specification used oil fuels. Acceptable boilers are those units which meet the criteria for "boilers" set out at § 260.10, and which are identified as:

a. Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

b. Utility boilers used to produce electric power, steam, or heated or cooled air or other gases or fluids for sale.

c. Used oil-fired space heaters which meet the specified conditions on heater size, source of oils burned, and venting of combustion gases. (40 CFR 266.41(b)(2)).

The Burn Ban Rule's prohibition on burning off-specification used oil fuels in "nonindustrial" boilers is made effective by the imposition of a variety of controls on marketers and burners. "Marketers" generally include any persons who market used oil fuels to burners or other marketers, and may include the generator of the fuel if it markets the fuel directly to a burner. Under § 266.41, the marketing of off-specification fuels is limited to other marketers and the acceptable burners who have notified EPA of their activities. Used oil fuels are presumed to be off-specification, unless the marketer has obtained the necessary analyses or other information documenting that the fuel meets the specifications. (40 CFR 266.43(b)(1)). Before a marketer initiates its first shipment to a burner, he must obtain a one-time, written certification from the burner stating that the burner has notified EPA of his used oil burning activities, and that it will burn the fuel only in an industrial furnace or boiler identified in § 266.41(b). (See 40 CFR 266.42(b)(5)). A similar certification requirement applies to shipments between marketers.

Testing is ordinarily used by marketers to demonstrate compliance with the specifications. The Burn Ban Rule requires that the first person (marketer or burner) claiming compliance with the specifications must obtain the analysis or other information which supports his claim. In addition to testing of representative samples, the "other information" may include personal, special knowledge of the oil's source and composition, or a certification from the generator claiming the oil meets the specification. (See 50 FR 49190).

EPA believes that a prohibition of the burning of PCB-containing used oil fuels in nonindustrial boilers is necessary in order to exclude from the universe of eligible combustion facilities those units which, as a class, have been identified as posing the greatest likelihood of operating under combustion conditions and in locations which could result in significant PCDF exposures.

2. *Regulatory impacts.* EPA believes that the net regulatory impact of these restrictions will be insignificant. This proposal makes PCB-containing used oils (<50 ppm) available to a much larger universe of eligible combustion facilities than allowed under the current regulations. The availability of these combustion facilities (qualified incinerators, industrial furnaces, industrial boilers, utility boilers, etc.) and the availability of other recycling markets (e.g., other industrial uses and rerefining) should provide more than adequate capacity to handle any market shifts caused by the prohibition on burning in nonindustrial boilers. EPA believes that the used oil management system has already responded to the Burn Ban Rule by diverting the bulk of used oil fuels away from the nonindustrial boiler market; any further diversion caused by today's proposal should be minimal. For all these reasons, EPA concludes that allowing the burning of PCB-containing used oil fuels (,50 ppm PCBs), under the conditions proposed in this document, will not present an unreasonable risk of injury to health or the environment.

3. *Implementation.* Consistent with the approach adopted in the Burn Ban Rule, EPA is proposing to implement the prohibition on burning in nonindustrial boilers through a combination of limited

testing requirements, prohibitions, and recordkeeping requirements.

Used oil fuels are presumed to contain PCBs above the practical limit of quantitation (i.e., 2 ppm), and therefore would be subject to these restrictions, unless the marketer obtains PCB analyses (testing) or other information documenting that the used oil fuel does not contain detectable levels of PCBs. The first person who claims that a used oil fuel does not contain quantifiable levels of PCBs must obtain the analysis or other information to support his claim. The "other information" could include personal, special knowledge of the source and composition of the used oil or a certification from the generator claiming that the oil does not contain PCBs above the practical limits of quantitation (2 ppm).

The proposal would require that testing be performed on individual oil samples. The Agency solicits comment on the appropriateness of including batch testing procedures (see, e.g., 40 CFR 761.60(g)(2)), or some other means of designating representative samples. Oils not containing quantifiable levels of PCBs would be free from further regulation, unless they fail to meet one of the used oil fuel specifications or contain a hazardous waste.

To avoid confusion and inconsistency, the proposal references the terms "marketer" and "market," as well as the standards prescribed for used oil fuel marketers at 40 CFR 266.43. The term "market" connotes the "processing" and "distribution in commerce" activities associated with the blending, treating, processing, distribution, or other preparation of used oil fuel for burning.

The proposed prohibitions would apply to both burners and "marketers." A person may market (process or distribute in commerce) used oil containing PCBs at levels between the practical limits of quantitation (2 ppm) and 50 ppm for energy recovery only to burners who qualify either as a "qualified incinerator" under 40 CFR 761.3, or as a combustion device identified in 40 CFR 266.41(b). Generators who market used oil directly to burners would be deemed "marketers" for the purposes of this regulation. Before an eligible burner accepts its first shipment of used oil fuel containing <50 ppm PCBs from a marketer, he would be required to provide the marketer a one-time written and signed notice certifying that he will burn the used oil only in a qualified incinerator (§ 761.3) or in a combustion device identified in § 266.41(b). Marketers would be required to retain copies of their used oil analyses (or other information relating to PCB levels in oil) for 3 years; they would also be required to retain a copy of each certification that they have received from burners for three years from the date they last engaged in used oil marketing transactions with the burner sending the certification.

EPA requests comments on the proposal to prohibit the burning of PCB-containing used oil in nonindustrial boilers. Specifically, EPA requests comments on the following issues:

a. The proposal excludes nonindustrial boilers from the universe of eligible combustion facilities because these units as a class are unlikely to consist of small, unsophisticated boilers which may not be able to attain the controlled, efficient combustion conditions necessary to avoid the formation of PCDFs. Such units could present significant PCDF exposures if their operating conditions should approach those which optimize PCDF formation. Based on recent studies, EPA believes that PCDF formation is optimized when PCBs are burned at 675° C (1,250° F), with 8 percent excess oxygen, and a residence time of about 0.8 seconds. On the other hand, formation of PCDFs from PCBs would be expected to be far from optimal when combustion occurs at temperatures of 1,000° C (1,832° F) or greater.

Are there other classes of combustion facilities which operate under conditions which would minimize PCDF formation but which are not included within the definitions of qualified incinerator, utility boiler, industrial boiler, and industrial furnace? What are the combustion conditions of any such facilities, in terms of boiler size (Btu/hr), combustion temperature, residence time, excess oxygen, and availability of equipment and operators to control and monitor the fuel feed rate and the carbon monoxide and excess oxygen in the stack gas?

b. EPA has proposed to prohibit the burning in nonindustrial boilers of used oil fuels containing any detectable level of PCBs. The Agency could designate some PCB concentration greater than 2 ppm as the level above which this prohibition would apply. For example, if one assumes a linear relationship between available PCBs and for the formation of PCDFs, an order of magnitude reduction in the estimated exposure risk (from that calculated with an assumed 50 ppm PCB concentration) could be achieved by specifying 5 ppm as the maximum level which could be burned in nonindustrial boilers. What would be the impacts of designating 5 ppm or some other PCB concentration in terms of the proportion of oils affected and the additional amounts of oil that would be available for burning in nonindustrial boilers? What would be the incremental costs incurred by those persons who must already incur the testing costs and other costs associated with the November 29, 1985 regulation? Does a viable market still exist for distributing used oil fuels for burning in nonindustrial boilers? Should EPA allow fuels to be blended to comply with the concentration limit?

c. Athough this proposal calls for restrictions on the burning of used oil products with less than 50 ppm PCBs, comments received in response to this notice will be considered by EPA in determining the appropriateness of this approach. Comments regarding actual boiler combustion conditions and overall impacts of the proposal on the recycling of used oil may persuade EPA that the potential for PCDF exposures does not warrant the controls contained in this proposal. In that event, the final rule could adopt the option of excluding all used oil products (with <50 ppm PCBs) from regulation, without any restrictions on burning or other recycling activities.

G. Electrical Equipment Components

The definition of "excluded PCB products" in this document would extend to those products which consist of component parts derived from the rebuilding or salvaging of electrical equipment containing PCBs at levels less than 50 ppm.

In previous rulemakings, EPA has referred to electrical equipment containing quantifiable PCB levels less than 50 ppm as "non-PCB" electrical equipment, in the sense that the PCB levels are below the regulatory cutoff prescribed by the PCB disposal program under TSCA. The "non-PCB" status of such equipment is a favored status under the TSCA PCB regulations. Indeed, the regulations encourage owners and operators of electrical equipment to perform servicing that "reclassifies" their more highly contaminated equipment as "non-PCB" equipment, which equipment is essentially free form TSCA regulation. The significance of the various regulatory classifications of electrical equipment, including the "non-PCB" class, is more fully articulated in the Electrical Equipment Rule published in the **Federal Register** of August 25, 1982 (47 FR 37342).

The Electrical Equipment Rule defines the significant categories of regulated electrical equipment, and it prescribes conditional use authorizations which attach to each affected category. In several instances (e.g., PCB

Transformers in locations posing a risk to food and feed), the prescribed conditions on equipment use require the phase-out of equipment and installations identified as presenting particularly significant risks. Generally, however, the use conditions relate to inspection, maintenance, servicing, and recordkeeping requirements which must be performed in order to maintain the electrical equipment in service. For example, most PCB Transformers (those containing dielectric fluid with >500 ppm PCBs) may remain in service for the remainder of their useful lives, contingent upon performing quarterly inspections and maintaining the equipment in a state of repair free from leaks. See 40 CFR 761.30(a)(1). Also, while PCB Transformers may be serviced with dielectric fluid containing PCBs at any concentration, the regulations prohibit rebuilding or other servicing that involves the removal of the transformer's core. 40 CFR 761.30(c)(2).

The Electrical Equipment rule authorized indefinitely the use of many types of "non-PCB" (<50 ppm PCBs) electrical equipment. Authorized "non-PCB" equipment includes transformers (§ 761.30(a)); electromagnets, switches, and voltage regulators (§ 761.30(h)); capacitors (§ 761.30(l)); and circuit breakers, reclosers, and cable (§ 761.30(m)). For each of these categories, the Electrical Equipment Rule authorized use at the <50 ppm level, without any corresponding use conditions restricting that use. In other words, as long as no fluids with greater than 50 ppm PCBs are introduced to such equipment, there are no restrictions on the servicing of this equipment, including its rebuilding. Intact "non-PCB" electrical equipment is also free from any requirement to obtain exemptions from the processing and distribution in commerce bans under TSCA. Thus, this equipment is essentially free from TSCA regulation.

Moreover, it is the Agency's position that the July 10, 1984 rule (and the elimination of the 50 ppm cutoff) was not intended to affect the activities authorized under the PCB Electrical Equipment Rule. So, the distribution in commerce and processing of PCBs (<50 ppm) in connection with the use and servicing of "non-PCB" equipment remains free of the TSCA section 6(e) bans, despite the elimination of the 50 ppm cutoff on October 1, 1984.

Nevertheless, the elimination of the 50 ppm cutoff has raised doubts about the continued legality of the reuse of equipment components derived from the salvaging of "non-PCB" equipment. Since the promulgation in 1979 of the PCB Ban Rule, the Agency has recognized that drained, obsolete transformers (formerly containing <500 ppm PCBs) may be disposed of as salvage. Although described as a form of unregulated disposal, a qualification on permissible salvage operations is that they must bring about the termination of the useful life of PCBs or PCB Items. So, salvaging which accomplishes metals recovery through the smelting of transformer components generally qualifies as "disposal" under TSCA, because the PCBs are eliminated by the smelting process. On the other hand, where drained equipment is merely dismantled to recover components for further processing, distribution in commerce, and reuse, the salvaging activities constitute an unauthorized recycling (i.e, reuse) of PCBs under the existing regulations. As in the case of used oil recycling discussed in unit IV.E. above, such recycling activities possess a dual "use" and "disposal" nature, enabling EPA to regulate the use aspect at PCB levels under 50 ppm, despite the fact that disposal is unregulated below 50 ppm. Currently, there is no specific authorization or exclusion in the PCB regulations that allows the recycling of such components.

The proposed exclusion for "excluded PCB products" will have a limited impact on salvaging and rebuilding activities involving "non-PCB" electrical equipment. The Agency has previously authorized the unrestricted servicing (including rebuilding) of electrical equipment with less than 50 ppm PCBs, and the Agency is not reevaluating in this proceeding that authorization or the determination that allowed the salvaging of drained equipment. Rather, this discussion only clarifies that the components, when generated by authorized rebuilding or salvaging activities, are "excluded PCB products" within the meaning of the exclusion proposed today. As such, any impediment to their further use, processing, or distribution in commerce would be removed; these components could be freely incorporated into other electrical equipment, or distributed in commerce for the purpose of reuse in electrical equipment. EPA does not believe that recycling activities involving these components present any significantly greater risks than other activities connected with the unrestricted use of "non-PCB" electrical equipment.

H. Land Application of Solid Wastes

The proposal relating to "excluded PCB products" would not extend to those "products" consisting of non-hazardous solid wastes (including sewage sludges) which contain PCBs and which are applied to land used for the production of food chain crops. This exception is expressed in the proposed definition of "excluded PCB products" to emphasize that land application practices involving wastes which contain PCBs at levels under 50 ppm are governed exclusively by the provisions of non-TSCA regulatory programs. The exception merely codifies this Agency's traditional practice of deferring to other statutory programs (e.g., CWA and RCRA) that regulate the management of sewage sludge (and like wastes) containing less than 50 ppm PCBs. See 43 FR 24804.

EPA currently regulates land application practices involving non-hazardous solid wastes (including sewage sludge) under a regulation codified at 40 CFR 257.3–5. This regulation prescribes restrictions on the application of sewage sludges and other non-hazardous wastes to land used for the production of food-chain crops. The regulation was promulgated on September 13, 1979 (44 FR 53438) under both the RCRA Subtitle D authority to prescribe solid waste management criteria and the authority of section 405(d) of the CWA to issue guidelines for the disposal and utilization of sewage sludge.

The land application criteria of 40 CFR 257.3–5 were interim rules designed to balance the benefits of resource conservation against the potential threat to the human food chain caused by improper land application practices. The application of sewage sludge and other solid wastes may provide significant benefit through the addition of organic matter, nitrogen, phosphorous, and certain other essential trace elements to the soil. On the other hand, improperly managed wastes may introduce toxic elements, compounds, and pathogens into the food chain. See 44 FR 53449.

The Part 257 land application rules specifically address the application of non-hazardous wastes (including sewage sludge) containing PCBs to fields growing animal feeds. 40 CFR 257.3–5(b). Under this regulation, land used for growing animal feeds includes any land used for a crop grown for consumption by animals, including land used to grow pasture crops upon which graze animals raised for milk (40 CFR 257.3–5(c)). The regulation generally requires that such wastes be "incorporated into the soil" if the wastes contain 10 ppm or more of PCBs, unless the applier can ensure that his application of wastes to land will not result in the PCB content exceeding specified FDA tolerances for PCBs in

animal feed or milk. See 40 CFR 257.3–5(b).

Although the reliance on FDA tolerances as a performance standard defining permissible land application practices is premised on protection of human health and the environment, the existing Part 257 standards are not truly risk-based in the same sense that TSCA evaluates risk. These standards are not derived from a balancing of the magnitude of exposure, the probability of harm, and the economic impacts of regulation.

EPA could use its TSCA section 6(e) authority as the basis for requirements governing the land application of sewage sludge and other materials contaminated with PCBs at levels under 50 ppm. As with used oil recycling (unit IV.E.) and the recycling of electrical equipment components (unit IV.G.), there are "use" and "disposal" aspects to the land application of such materials. Thus EPA could regulate the use aspect under TSCA at levels under 50 ppm regardless of whether these activities were also considered to be disposal practices. Indeed, if EPA had not elected in the past to defer to its CWA and RCRA statutes as the authorities for regulating land application practices, TSCA section 6(e) would compel the conclusion that land application involving any quantifiable level of PCBs is currently an unauthorized use of PCBs.

However, EPA is dispelling any such construction of TSCA section 6(e) by reiterating in this notice that it regulates land application of sewage sludge and other materials containing less than 50 ppm PCBs according to the requirements specified under its CWA and RCRA programs, rather than under its TSCA jurisdiction to regulate PCB activities. Any concerns about the PCB exposure risks posed by land application practices can be addressed adequately in the relevant CWA and RCRA programs.

In November, 1984, Congress enacted the Hazardous and Solid Waste Amendments of 1984 (HSWA). HSWA directed EPA to study and revise the existing Subtitle D solid waste management criteria. Although the emphasis of the HSWA mandated studies and revisions is the protection of ground water, the Congressionally mandated study includes Part 257 land management units within its scope.

Moreover, EPA's current plans call for the promulgation of a risk-based PCB standard in the context of new regulations required under section 405(d) of the CWA, as amended by the Water Quality Act of 1987. Congress intended the section 405(d) provisions to serve as authority for the comprehensive regulation of sewage sludge use and disposal practices. Land application restrictions are one aspect of the sewage sludge program under section 405(d), which requires EPA to prescribe sewage sludge management practices and maximum numerical concentrations for toxic pollutants, as necessary to protect human health and the environment.

The regulatory agenda for EPA's Office of Water anticipates the publication of proposed section 405(d) rules in late summer or early fall of 1987. In support of these rules, the Agency has already conducted risk assessments for some 32 toxic pollutants (including PCBs) that are relevant to land application practices, including the distribution and marketing of sewage sludge. The Agency expects that its first round of section 405(d) rulemaking will include new provisions which pertain to the land application of sewage sludges containing <50 ppm PCBs, and which will be codified in final form at 40 CFR 503. These provisions will specify management practices and risk-based maximum PCB concentrations in sewage sludge which will affect sewage sludge use practices more comprehensively than the previously issued Part 257 rules. When these new land application regulations pertaining to PCBs in sewage sludges are issued, they will govern land application practices involving sewage sludge and supersede in part the existing Part 257 regulations. In any event, land application practices involving PCBs at levels less than 50 ppm will continue to be regulated under the appropriate Part 257 and Part 503 regulations, rather than under the TSCA regulations of Part 761.

V. Materials Decontaminated Pursuant to Spill Cleanup Policies

EPA is proposing an amendment which would affect an additional class of materials contaminated with PCBs at the less than 50 ppm level. Unlike the products discussed in Unit IV, however, the PCB levels for the materials discussed in this Unit are not simply residual levels of contamination resulting from historic manufacturing, use, or recycling activities. Rather, the <50 ppm PCB concentration levels for these materials are achieved through purposeful decontamination activities performed in accordance with applicable PCB Spill Cleanup policies.

This proposal would formally exclude from the TSCA section 6(e) prohibitions on use and distribution in commerce, certain equipment and other materials contaminated with PCBs, and not otherwise authorized by 40 CFR Part 761, provided that these materials were decontaminated in accordance with applicable PCB cleanup policies in effect at the time of decontamination. Today's proposal also would formally exclude from regulation the use of materials or equipment which became contaminated with PCBs prior to the effective date of the TSCA section 6(e) bans, and which have not undergone decontamination under any EPA PCB cleanup policy. However, before any of these materials could be distributed in commerce, this amendment would require that they be decontaminated in accordance with the PCB cleanup policies in effect at the time of distribution in commerce.

The Agency emphasizes that this proposal is intended to embrace only equipment, structures, and other materials that have inadvertantly become contaminated with PCBs (>50 ppm) on account of spills from, or proximity to, a PCB Item. The "spills" giving rise to contamination must not have been the result of any intentional discharge of PCBs, and the contamination must be attributable to PCB Items and activities which are themselves authorized. Typically, the materials affected by this proposal would consist of equipment or structures in proximity to (or used to service) PCB-containing electrical equipment (e.g., transformers, capacitors) or hydraulic systems. However, this proposal is not intended as a means of decontaminating PCB Equipment, PCB Articles, or other PCB Items (see § 761.3) which deliberately or unintentionally contain or have as a part of them any PCBs. The availability of decontamination as a means of allowing the further use and distribution in commerce of PCB Items is limited to the decontamination procedures specified in 40 CFR 761.79 for PCB Containers and movable equipment used in storage areas.

This proposal would merely codify an existing (though not specifically authorized) practice. Currently, eligible materials are decontaminated to standards set by the EPA Regions on a case-by-case basis. Although there may be some variation among the Regions in specifying the required cleanup levels in particular cases, in each case, cleanup standards specified under existing Regional cleanup policies are established at levels intended to ensure compliance with the PCB disposal regulations.

Moreover, the Agency has recently published its nationwide PCB Spills Cleanup Policy, which established uniform cleanup levels for specified spill types and locations. This nationwide policy prescribes cleanup levels for different types of "spills" according to

the PCB concentration involved in the spill, the type of material contaminated, and the spill location. In developing the nationwide policy, EPA considered modeling done of typical leaks and spills during EPA-authorized activities. The Agency evaluated these typical spills to assess the potential routes of exposure, the risks associated with these exposures, and the costs associated with attaining cleanup to particular levels. The cleanup levels that were specified for particular spill types, locations, and materials resulted from a balancing of the exposures, risks, and costs. In other words, the designation of cleanup levels in each case followed from a determination that the residual PCB levels would not present unreasonable risks of injury to health or the environment. Implicitly, the further use, processing, and distribution in commerce of materials decontaminated in accordance with the nationwide cleanup policy will not present an unreasonable risk.

When the nationwide PCB cleanup policy becomes effective, the cleanup levels specified by it will supersede the Regional policies. The proposed amendment will of course specifically exclude from regulation eligible materials already decontaminated in conformity with Regional policies. Also, in the case of materials not yet decontaminated, they must be decontaminated in accordance with the cleanup policy in effect at the time of distribution in commerce. This language allows for the eventuality that the nationwide policy supersedes the various Regional cleanup policies. EPA solicits comment on this proposed amendment.

VI. Official Rulemaking Record

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is issuing the following list of documents, which constitutes the record of this proposed rulemaking. This record includes basic information considered by the Agency in developing this proposal, including appropriate **Federal Register** notices, published and unpublished reports, economic and exposure analyses, and various communications before proposal. A supplementary list or lists may be published any time on or before the date the final rule is issued.

A full list of these materials will be available on request from EPA's TSCA Assistance Office listed under **"FOR FURTHER INFORMATION CONTACT."** However, any Confidential Business Information (CBI) that is a part of the record for this rulemaking is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection.

A. Previous Rulemaking Records

(1) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Disposal and Marking Rule," Docket No. OPTS-68005, 43 FR 7150, February 17, 1978.

(2) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions Rule," 44 FR 31514, May 31, 1979.

(3) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment," Docket No. OPTS-62015, 47 FR 37342, August 25, 1982.

(4) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes," Docket No. OPTS-62017, 47 FR 46980, October 21, 1982.

(5) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Amendment to Use Authorization for PCB Railroad Transformers," Docket No. OPTS-62020, 48 FR 124, January 3, 1983.

(6) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Response to Individual and Class Petitions for Exemption," Docket No. OPTS-66008A, 49 FR 28154, July 10, 1984.

(7) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Exclusions, Exemptions, and Use Authorizations," Docket No. OPTS-62032A, 49 FR 28172, July 10, 1984.

(8) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Transformers," Docket No. OPTS-62035D, 50 FR 29170, July 17, 1985.

(9) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Response to Exemption Petitions," Docket No. OPTS-66008E, 51 FR 28556, August 6, 1986.

B. Federal Register Notices

(10) 46 FR 27617, May 20, 1981, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacture of PCBs in Concentrations Below Fifty Parts Per Million; Possible Exclusion from Manufacturing Prohibition; Advance Notice of Proposed Rulemaking.

(11) 44 FR 31514, May 31, 1979, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions."

(12) 44 FR 53438, September 13, 1979, USEPA, "Criteria for Classification of Solid Waste Disposal Facilities and Practices."

(13) 47 FR 46980, October 21, 1982, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes."

(14) 48 FR 55076, December 8, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Exclusions, Exemptions, and Use Authorizations; Proposed Rule."

(15) 49 FR 28172, July 10, 1984, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Exclusions, Exemptions, and Use Authorizations; Final Rule."

(16) 49 FR 28154, July 10, 1984, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Response to Individual and Class Petitions for Exemptions."

(17) 50 FR 19170, July 17, 1985, USEPA, "Polychlorinated Biphenyls in Electrical Transformers; Final Rule."

(18) 50 FR 49212, November 29, 1985, USEPA, "Hazardous Waste Management System; Recycled Used Oil Standards; Proposed Rule."

(19) 50 FR 49258, November 29, 1985, USEPA, "Hazardous Waste Management System; General, Identification and Listing of Hazardous Waste; Used Oil; Proposed Rule."

(20) 50 FR 49164, November 29, 1985, USEPA, "Hazardous Waste Management System; Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces."

(21) 51 FR 28556, August 8, 1986, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Response to Exemption Petitions."

(22) 51 FR 41900, November 19, 1986, USEPA, "Identification and Listing of Hazardous Waste; Used Oil;" Notice Announcing Decision Not To Adopt

Proposed Rule Listing Used Oil as Hazardous Waste.

(23) 52 FR 10688, April 2, 1987, USEPA, "Polychlorinated Biphenyls Spill Cleanup Policy"

C. Support Documents

(24) August 7, 1986 Settlement Agreement filed with United States Court of Appeals for the District of Columbia Circuit, in Docket Nos. 84–1481 and 85–1118.

(25) USEPA, OPTS, EED, Versar, Inc., "Assessment of Exposures Resulting from Recycle/Reuse of Used Oil Containing PCBs at Levels Less Than 50 PPM" (January, 1987).

(26) USEPA, OPTS, ETD, Putnam, Hayes and Bartlett, Inc., "PCB Rule Revision, Cost-Effectiveness Analyses and Estimates of Exposed Population" (March, 1987).

(27) USEPA, OTS, Versar, Inc., "Development of a Study Plan for Definition of PCBs Usage, Wastes, and Potential Substitution in the Investment Casting Industry" (January, 1976).

(28) USEPA, OPTS, ETD, ICF, Inc., "Costs of Prohibiting Reclaimed Investment Casting Wax Containing PCBs Below 50 PPM" (DRAFT) (September, 1985).

(29) USEPA, OPTS, EED, January 17, 1985 letter from Honorable Ralph Regula to William Prendergast, EPA, forwarding January 10, 1985 letter from constituent, Charles LeBeau, Cambridge Mill Products, Inc.

(30) USEPA, OPTS, EED, Letter from John A. Moore, EPA, to Honorable Ralph S. Regula (January 3, 1985).

(31) USEPA, OPTS, EED, "Potential PCDF Formation during Combustion of Used Oil Containing Low Levels of PCBs."

(32) USEPA, OPTS, EED, "Exposure Estimates for the Amendment to the PCB Regulation" (November 20, 1986).

(33) USEPA, OPTS, EED, "Exposure Estimates for the Amendment to the PCB Regulation" (December 23, 1986).

(34) USEPA, OPTS, EED, "A Manual for the Preparation of Engineering Assessments" (September 1, 1984).

(35) USEPA, OPTS, EED, Letter from C. Nelson Schlatter, Edmont Corporation to Dr. John Moore, EPA (October 15, 1984).

(36) USEPA, OPTS, EED, Letter from Dr. John A. Moore, EPA to C. Nelson Schlatter, Edmont Corporation (November 15, 1984).

(37) USEPA, OPTS, EED, Letter from Oswald Schindler, Intermarket Latex, Inc. to Martin Halper, EPA (November 13, 1984).

(38) USEPA, OPTS, ETD, "Addendum to the Heat Transfer and Hydraulic Systems RIA" (undated).

(39) USEPA, OPTS, ETD, "PCB Glove Requirement Costs: Present Value" (February, 1987).

(40) USEPA, OW, PCB Information Survey, Deink Direct Dischargers by Region and NPDES Permit Numbers (November, 1984).

(41) USEPA, OPTS, EED, Letter from Richard S. Wasserstrom, American Paper Institute, Inc. to Alan Carpien, EPA (October 11, 1984).

(42) USEPA, OPTS, EED, Letter from Richard J. Kissel, Attorney for ADCI and OMC, to John A. Moore, EPA (October 24, 1984).

(43) USEPA, OPTS, EED, Letter from Alan Carpien, EPA to Richard J. Kissel, Attorney for ADCI and OMC (November 20, 1984).

(44) USEPA, OPTS, EED, Letter from Timothy S. Hardy, Attorney for CMA to Alan Carpien, EPA (November 27, 1984).

(45) USEPA, OPTS, EED, Letter from Richard S. Wasserstrom, API to Alan Carpien, EPA (August 20, 1985).

(46) USEPA, OPTS, EED, Letter from Timothy S. Hardy, Attorney for CMA, to Alan Carpien, EPA (August 28, 1985).

(47) USEPA, OPTS, EED, Letter from Jeffrey C. Fort, Attorney for ADCI and OMC, to Alan Carpien, EPA (November 22, 1985).

(48) USEPA, OPTS, EED, Letter from Suzanne Rudzinski, EPA to Timothy S. Hardy, Attorney for CMA (January 21, 1986).

(49) USEPA, OPTS, EED, Letter from Robert J. Fensterheim, CMA to Suzanne Rudzinski, EPA (March 19, 1985).

(50) USEPA, OPTS, EED, Letter from Robert J. Fensterheim, CMA to Suzanne Rudzinski, EPA (June 17, 1985).

(51) USEPA, OPTS, EED, Letter from Suzanne Rudzinski, EPA to Robert J. Fensterheim, CMA (July 17, 1985).

(52) USEPA, OPTS, EED, Letter from Toni K. Allen, Attorney for USWAG, to Lee M. Thomas, Administrator, EPA (August 12, 1986).

(53) USEPA, OPTS, EED, Letter from John A. Moore, EPA to Toni K. Allen, Attorney for USWAG (September 9, 1986).

(54) USEPA, OPTS, EED, Letter from Suzanne Rudzinski, EPA to George Fekete, Jr., Pennwalt Corporation (October 22, 1986).

(55) USEPA, OPTS, EED, Letter from Suzanne Rudzinski, EPA to Paulette Vest, Vest Metal Company (October 22, 1986).

(56) USEPA, OPTS, EED, Letter from Suzanne Rudzinski and John J. Neylan III, EPA to Lt. General Vincent M. Russo, Defense Logistics Agency (August 28, 1986).

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, issued February 17, 1982, EPA must judge whether a regulation is a "major rule," and therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this proposed rule is not a "major rule" because it does not meet the criteria set forth in section 1(b) of the Executive Order.

The effect on the economy will be the avoidance of significant costs which would otherwise be incurred if EPA maintained the existing use authorizations for hydraulic and heat transfer systems, which include the Viton glove requirement. Likewise, the proposed rule avoids the substantial costs associated with maintaining the existing prohibitions of activities involving products containing low levels (under 50 ppm) of PCB contamination.

No significant increases in prices are expected to occur as a result of this rule. No significant adverse effects are expected on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (the Act) (15 U.S.C. 601 et seq., Pub. L. 96–534, September 19, 1980), requires EPA to prepare and make available for comment an regulatory flexibility analysis in connection with rulemaking. The initial regulatory flexibility analysis must describe the impact of the proposed rule on small business entities. Section 605(b) of the Act "shall not apply to any proposed or final rule if the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

In accordance with section 605(b) of the Act, EPA certifies that this rule, if promulgated, will not have a significant impact on a substantial number of small businesses. The rule is in fact non-discriminatory in its impact on business entities, and the impact on all business entities is generally to exclude from regulation activities currently prohibited under TSCA section 6(e), and not previously authorized, exempted or excluded by regulation. Small businesses will share equally in the benefits of this rule, including the

elimination of the Viton glove requirement in the use authorization for hydraulic and heat transfer systems, and the general exclusion for products contaminated with PCBs at levels below 50 ppm. To the extent that regulatory controls are retained over the burning of PCB-containing used oil in nonindustrial boilers, any impact on small business entities is not appreciably greater than the impact already being borne by these entities under the existing prohibition on burning off-specification used oil in nonindustrial boilers. Moreover, the rule would implement the limited restrictions on burning PCB-containing used oil (under 50 ppm) in a manner such that any additional economic burdens would be borne primarily by the marketers of used oil, rather than by the small business entities who may burn used oil fuels in nonindustrial boilers.

EPA solicits comments from interested persons concerning the economic impact of this proposed rule on small business entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, authorizes the Director of OMB to review certain information collection requests by Federal Agencies. Under OMB Control Number 2070–0008, OMB has approved an information collection request submitted by EPA in connection with the recordkeeping and reporting requirements which facilitate the implementation and enforcement of the Uncontrolled PCBs Rule. Further, under OMB Control Number 2050–0047, OMB has approved the information collection requirements (including invoice shipping papers, certifications, and used oil analysis) which facilitate the implementation of the prohibition on burning certain used oil fuels in nonindustrial boilers. OMB has also approved the provisions of this proposed rule, which requires that information related to PCBs in used oil fuels be added to the existing information collections previously approved by OMB.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous materials, Labelling, Polychlorinated biphenyls, Recordkeeping and reporting requirements.

Dated: June 15, 1987.

Lee M. Thomas,

Administrator.

PART 761—[AMENDED]

Therefore, it is proposed that 40 CFR Part 761 be amended as follows:

1. The authority citation for Part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, and 2611.

2. Section 761.1 is amended by adding paragraph (f)(4) to read as follows:

§ 761.1 Applicability.

* * * * *

(f) * * *

(4) Except as provided in § 761.20 (d) and (e), persons who process, distribute in commerce, or use products containing excluded PCB products defined in § 761.3 are exempt from the requirements of Subpart B of this Part.

3. Section 761.3 is amended by adding and alphabetically inserting a definition for "Excluded PCB products" and revising the definitions for "qualified incinerator" and "Recycled PCBs" to read as follows:

§ 761.3 Definitions

* * * * *

"Excluded PCB products" are defined as PCBs which appear at concentrations less than 50 ppm in products, including but not limited to inadvertently generated PCBs as defined in this section, investment casting waxes, and used oils, provided:

(1) The products were manufactured, processed, distributed in commerce or used before October 1, 1984.

(2) The products were manufactured, processed, distributed in commerce or used pursuant to authority granted by EPA by regulation, by exemption petition, by settlement agreement, or pursuant to other Agency-approved programs.

(3) No provision specifying a PCB concentration may be avoided as a result of any dilution, unless otherwise specifically provided by regulation.

Note.—This rule does not affect land application practices involving sewage sludge or other non-hazardous solid wastes which contain PCBs at concentrations less than 50 ppm. These activities are regulated under other EPA programs, particularly, solid waste management criteria promulgated under Subtitle D of the Resource Conservation and Recovery Act (RCRA), and regulations controlling the use and disposal of sewage sludges under section 405(d) of the Clean Water Act (CWA). Existing regulations which govern land application practices involving these materials are codified at 40 CFR 257.3–5.

* * * * *

"Qualified incinerator" means one of the following:

(1) An incinerator approved under the provisions of § 761.70. Any concentration of PCBs can be destroyed in an incinerator approved under § 761.70.

(2) A high efficiency boiler which complies with the criteria of § 761.60(a)(2)(iii)(A), and for which the operator has given written notice to the Regional Administrator in accordance with the notification requirements for the burning of mineral oil dielectric fluid under § 761.60(a)(2)(iii)(B).

(3) An incinerator approved under section 3005(c) of the Resource Conservation and Recovery Act (42 U.S.C. 6925(c)) (RCRA).

* * * * *

"Recycled PCBs" are defined as those PCBs which appear in the processing of paper products or asphalt roofing materials from PCB-contaminated raw materials. Processes which recycle PCBs must meet the following requirements:

(1) There are no detectable concentrations of PCBs in asphalt roofing material products leaving the processing site.

(2) The concentration of PCBs in paper products leaving any manufacturing site processing paper products, or in paper products imported into the United States, must have an annual average of less than 25 ppm with a 50 ppm maximum.

(3) The release of PCBs at the point at which emissions are vented to ambient air must be less than 10 ppm.

(4) Disposal of any other process wastes at concentrations of 50 ppm or greater must be in accordance with Subpart D of this part.

4. Section 761.20 is amended by revising paragraph (a) and the introductory text of paragraph (c), and adding paragraphs (c)(5) and (e) to read as follows:

§ 761.20 Prohibitions.

* * * * *

(a) No person may use any PCB, or any PCB Item regardless of concentration, in any manner other than in a totally enclosed manner within the United States unless authorized under § 761.30, except that:

(1) An authorization is not required to use those PCBs or PCB Items which consist of excluded PCB products defined in § 761.3.

(2) An authorization is not required to use those PCBs or PCB Items resulting from an excluded manufacturing process or a recycled PCBs process defined in § 761.3, provided all applicable conditions of § 761.1(f) are met.

* * * * *

(e) No person may process or distribute in commerce any PCB, or any PCB Item regardless of concentration, for use within the United States or for export from the United States without an exemption, except that an exemption

is not required to process or distribute in commerce PCBs or PCB Items resulting from an excluded manufacturing process as defined in § 761.3, or to process or distribute in commerce recycled PCBs as defined in § 761.3, or to process or distribute in commerce excluded PCB products as defined in § 761.3, provided that all applicable conditions of § 761.1(f) are met. In addition, the activities described in paragraphs (c)(1) through (5) of this section may also be conducted without an exemption, under the conditions specified therein.

* * * * *

(5) Equipment, structures, or other materials that are contaminated with PCBs, and which are not otherwise authorized for use or distribution in commerce under this Part, may be distributed in commerce, provided that these materials were decontaminated in accordance with applicable PCB spill cleanup policies in effect at the time of decontamination or, if not previously decontaminated, at the time of distribution in commerce.

* * * * *

(e) In addition to any applicable requirements under 40 CFR Part 266, Subpart E, marketers of used oil are subject to the following requirements when they market (process or distribute in commerce) for energy recovery used oil containing any detectable level of PCBs:

(1) *Restrictions on marketing.* Used oil containing any detectable level of PCBs may be marketed only to:

(i) Qualified incinerators defined in 40 CFR 761.3;

(ii) Other marketers identified in 40 CFR 266.41(a)(1); or

(iii) Burners identified in 40 CFR 266.41(b).

(2) *Testing of used oil fuel.* Used oil to be burned for energy recovery is presumed to contain detectable levels of PCBs unless the marketers obtains analyses (testing) or other information documenting that the used oil fuel does not contain detectable levels of PCBs.

(i) The person who first claims that a used oil fuel does not contain detectable PCBs is subject to the requirement to obtain analyses or other information to support his claim.

(ii) Testing to determine the PCB concentration in used oil may be conducted on individual samples, or in accordance with the testing procedures described in § 761.60(g)(2).

(iii) Other information documenting that used oil fuel does not contain detectable levels of PCBs may consist of either personal, special knowledge of the source and composition of the used oil or a certification from the person generating the used oil claiming that the oil contains no detectable PCBs.

(3) *Restrictions on burning.* (i) Used oil containing any detectable level of PCBs may be burned for energy recovery only in the combustion facilities identified in § 761.20(e)(1). Owners and operators of such facilities are "burners" of used oil fuels.

(ii) Before a burner accepts from a marketer the first shipment of used oil fuel containing detectable PCBs (<50 ppm), he must provide the marketer a one-time written and signed notice certifying that:

(A) He has complied with any notification requirements applicable to "qualified incinerators" (§ 761.3) or to "burners" regulated under Subpart E of Part 266; and

(B) He will burn the used oil only in a combustion facility identified in § 761.20(e)(1).

(4) *Recordkeeping requirements.* (i) The marketer who first claims that used oil fuel contains no detectable PCBs must include copies of the analysis or other information documenting his claim among the records to be kept under 40 CFR 266.43(b)(6)(i).

(ii) Burners must include a copy of each § 761.20(e)(3)(ii) certification notice that he sends to a marketer among the records required to be kept under 40 CFR 266.44(3).

(iii) A marketer must include a copy of each certification notice relating to transactions involving PCB-containing used oil among the records required to be kept under 40 CFR 266.43(b)(6)(ii).

§ 761.30 [Amended]

5. Section 761.30 is amended by removing paragraphs (d) (6) and (7) and by removing paragraphs (e) (6) and (7).

[FR Doc. 87-15245 Filed 7-7-87; 8:45 am]

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